fumbling this way. This is a sheaf of correspondence from National taking up, questioning various things, and I am skimming through this to take up types of—

The Court: I know what you are doing, but you have had them for days and you have a very able corps of assistants here to help you get things in better shape than that.

Mr. Marcus: Well, I merely have these to look through.

Q. I gather from Exhibit 2672 that your hospital did receive a fee schedule from the National in 1940, is that correct? A. I couldn't tell you. I don't know. Probably we did, though. They always sent us one if we
1706 asked for it.

Q. Now, I don't recall, Doctor, whether on direct you said you had a complaint with respect to the payment of bills. Is that correct? A. We were always in some dispute. Anybody that did any business with the National had disputes with them.

Q. Well, let's confine it, Doctor, to your own experience. And these bills you have turned over to Defendants' counsel will illustrate those disputes, will they not? A. As far as I know. I didn't look at them.

Q. Now, Defendants' Exhibit 2675 is a statement from the National Hospital Association to you listing approximately 100 names of different persons for whom you had requested payment for medical treatment; and then there is a statement "The enclosed check is in payment of the following:"—that is in reference to these some hundred persons. "Exceptions: Garney Bower, a subsequent residence call, $2; and Alfred Zenor, continued treatment and subsequent office call at $1 each," and that is out of a total bill of $211, and you say that is typical. A. Well, that happened to be practically every statement that you sent in that there was some change made in it reducing the amounts; you billed them at what you thought was the fair figure but you didn't always get that.

Q. In this instance there was an exception to two persons' accounts out of some 100? A. There was an
1707 exception in the bills too.

Q. Now, Doctor, with respect to the letters you wrote in 1940 declining to thereafter accept Hospital Association tickets, it is true, is it not, that you did so in collaboration with the others, other hospital associations in that area? A. That is right.

Mr. Marcus: That is all.

Redirect Examination

By Mr. Jaureguy:

Q. That is with those hospitals whose names were signed to the letter? A. That is correct.

Q. That doesn't include— A. That doesn't include the ones at Coos Bay.

Q. Didn't include the ones at Marshfield or North Bend, included the Coquille and Bell Knife and— A. And Mast.

Q. And those are all private hospitals? A. All private hospitals within the Coquille Valley district.

Q. Yes. Now, you testified that certain of these things the National requested were within their rights and so you did it, such as sending in the pathological reports and sending in the X-rays and things of that kind, but, nevertheless, whether you thought it was properly
1708 within their rights, it took time and trouble for you, didn't it? A. That is correct.

Q. And if it had been a private patient you would have kept the X-rays? A. That is right.

Q. And from the standpoint of the welfare of the patient is it better for the patient's doctor to have the X-rays or for the X-rays to be in Portland? A. Well, it would depend upon the type of case. If it were a fracture and you were through with it it wouldn't make any difference, but if it were a gastro-intestinal disturbance and you might want to check back six months later it would be much better to have them.

The Court: It isn't unusual in private practice for patients to take X-rays home or want to take them home, is it?

A. It is rare they ever want to. We always keep them in our own office.

Mr. Jaureguy:

Q. So regardless of sending in tissues to pathologists and making reports and sending X-rays in to the Association, it was something you did and believed they were within their rights; nevertheless, did you feel that it was a burden on you and not for the best interest of the patient? A. That is right.

Q. And is that one of the reasons why you prefer to bill the patient privately? A. Well, that, of course, is
1709 part of the whole picture, yes.

Q. That is what I say among --that is a part of

the syndrome of the whole picture? A. That is right.

The Court: What is that? I missed that.

Mr. Jaureguy: Syndrome. I learned that from a psychiatrist.

Mr. Marcus: I am sorry to hear he has gone that far.

The Court: It is not a common word, is it?

Mr. Jaureguy:

Q. Now, with regard to private rooms, you and Dr. Wilson owned the hospital? A. That is right.

Q. And you and Dr. Wilson knew about the terms of the contract of the National that authorized private rooms at the expense of National? A. That is right.

Q. And you and Dr. Wilson determined, did you not, whether the patient would have a private room? A. That is correct.

Q. And did you ever send a bill in to the National for private rooms for patients when you didn't feel that under the terms of the contract that the National should pay them? A. No, we never did.

Q. Oh, yes, part of this letter about "you boys having performed operations without first getting authority", the last paragraph says, "Exceptions are always
1710 made in emergencies if after investigation it is shown that the person is eligible to care at the Association's expense."

Well, did you understand then that you were authorized to go ahead with operations if it was not an emergency? A. I don't recall whether we did or not. We generally went ahead anyway. We just found it was more practical to do it and then we got into an argument over it afterwards.

Q. Yes. Lots of arguments? A. Yes, plenty.

Q. Oh, these pathological reports and sending in of tissues, did you have to do that for other insurance companies—I don't mean prepaid cases. A. No, no. Just the ordinary insurance company, you make a report of your diagnosis and what you did.

Q. What about X-rays? A. The same thing with X-rays.

Q. Did you ever send those in to them? A. No, I never sent any X-rays to anybody, any insurance company.

Q. Did you have to get any authority before you could operate or give treatment or anything? A. No, no. Generally speaking with insurance companies you report it after you do it and not before.

1711 Recross Examination

By Mr. Marcus:

Q. Doctor, when you went ahead and made these operations without getting prior authority I understand you to say that then you had disputes, but it is true, is it not, that, disputed or not, the National didn't decline finally making a payment just because you hadn't got the prior authorization? A. No, they never did that with us. It—

Mr. Jaureguy: What is that? I don't think the witness finished.

A. I was going to make an explanation. You mentioned tonsils. A fellow comes along and he is going to have a couple days off, and you can't send to Portland to get his tonsils out. You have to do it now to prevent time loss from his job, and so we went ahead and did it, but many times they fussed about it but still it was the practical thing to do.

The Court: Court is in adjournment.

(Thereupon at 4:15 o'clock P.M. an adjournment was taken until 10:00 o'clock A.M., the following day, January 27, 1950.)

1712 Court reconvened at 10:00 o'clock A.M., Friday, January 27, 1950, pursuant to adjournment.

Mr. Jaureguy: Dr. Baum, will you take the witness stand.

Dr. William Wells Baum was thereupon produced as a witness in behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Would you give us your name, please? A. William Wells Baum.

Q. And you are one of the defendants in this case, Doctor? A. Yes, sir.

Q. Where do you live? A. Salem.

Q. And your business or occupation? A. Physician. Physician and surgeon more properly.

Q. You have been a physician and surgeon how long? A. I graduated from medical school in 1922.

Q. And what medical school was that? A. Washington University in St. Louis.

Q. And when did you have any internship or post-graduate work? A. I had three years training in my specialty.

Q. And where was that training? A. In Chicago and St. Louis and Denver.

1713 Q. And your specialty is what? A. Ophthalmology.

Q. And you have been practicing in Salem how long? A. Since 1926.

Q. So that Salem is the place you have practiced continously since you started practice? A. That is correct.

Q. Do you practice alone or are you with a group of doctors? A. I am associated in a partnership and have been ever since I came to Salem. I entered that partnership when I came there in 1926.

Q. And who are the doctors in the partnership? A. The partnership, of course, has changed. You mean at present?

Q. At the present time. A. Dr. Findley, Dr. Clements, Dr. Thompson, Dr. Dunham, Dr. Moreland and myself. We practice under the name of the Eye, Ear, Nose & Throat Clinic in the State of Oregon.

Q. Do you belong to any medical societies? A. Yes.

Q. And which societies do you belong to? A. I belong to the Marion-Polk Medical Society.

Q. And you have belonged to that how long? A. Since I arrived in Salem, 1926. The Oregon State Medical Society, the American Medical Association, and quite a few societies that have to do with my specialty. Do you want me to list them?

1714 Q. No. A. Three or four other special societies.

Q. Now, during your practice have you had occasion to take care of patients who were members of commercial hospital associations? A. Ever since I started to practice in Salem—

Mr. Marcus: The same objection, your Honor, as with respect to Dr. Durno to this line of testimony so far as it relates to his experience with the hospital associations.

The Court: The ruling will be the same. The testimony will be admitted subject to the objection.

Mr. Jaureguy:

Q. Will you give us a review of your experience with the commercial hospital associations. A. That is a large order. I suppose the best is to approach it chronologically when I came to Salem.

Q. I think that would be the best. A. I came to Salem and started in the practice of medicine. I joined this partnership, which then consisted of Findley and Steeves and Clement and myself, so I was the junior partner, and I don't know that I can recall now that the system of practice with commercial hospital associations made any particular impression upon me at first. It was in vogue in that community at that time; that is, there were a certain number of contracts held by the hospital associations. I believe
1715 that the National Hospital Association and the Industrial were the only two. If there were any others they were quite small. And we treated their patients under the system which was then in order, and I suppose you are familiar with it.

Q. Well, I wish you would tell us the system that was in order as you observed it. A. Well, patients came to our office and received treatment, presented the slip of the hospital association, so-called ticket, and we billed the hospital association for our services and the hospital association paid our bills. As I engaged in the practice of medicine in Salem under the hospital associations certain difficulties arose. We had difficulties with the hospital associations. I was aware of the fact pretty soon that patients were channeled. Being a junior member of the firm I was not, of course, at first directly concerned with the operation of the group. The senior partners, of course, hade more to do with that than I had, but one could hardly help becoming aware of the fact that our office got a great deal, if not all, of the work there was in our specialty from these hospital associations. The patients were channeled. There were conferences I was aware of, particularly between the senior partners and representatives of the hospital associations as to arrangements on finances and et cetera.

There were difficulties over bills that would arise from
1716 time to time. As nearly as I can recollect now it seems to me that most of the difficulties that I had or my firm had might be called minor, that is you bill the hospital association maybe for $15 and get a check back for $12.50, or you bill for $10 and get paid $8, small sums that you wouldn't particularly raise any fuss about

but which over a large sum or period of time amounted to quite a little.

As this practice continued I became gradually more dissatisfied with that type of service and eventually in—I couldn't tell you what year—but probably '29 or '30 when the Salem Physicians' & Surgeons' Hospital Association was formed in Salem, because that did have a bearing on it. In our group we came to the conclusion that our office would no longer serve the hospital associations, commercial hospital associations, and that we would not be on their panel, that we didn't care to accept their tickets, that we didn't to do business directly with them. I have no recollection of writing them a letter. I suppose we did. At any rate we notified them in some manner, I am sure of that; because we no longer accepted their tickets, and from that time on we took care of their patients as private patients.

Q. I wonder if I could interrupt here, Doctor. I think this would probably be the appropriate time to tell us about the Physicians' & Surgeons' Hospital Association. A. Yes. I say that that had an effect upon our action in no longer accepting tickets, and I am aware of the fact
1717 that one of the defendants in this case was accused of some sort of conspiracy, and I don't mean to imply that there was any, but these things do—one thing does have an effect on the other. The Salem Physicians' & Surgeons' Hospital Association, to the best of my recollection, was somewhat as follows: I think it was in 1929 our office received a phone call from Dr. H. J. Clements who asked that some member of the firm meet with him and one or two other doctors to discuss the setting up in Salem of a prepaid medical care plan which would be owned and operated by physicians and which would supply the people of Salem with medical care on a prepaid basis.

I was asked by the other members of my group to represent the office, you might say, to attend the meeting, which I did, and there were present at that first meeting, as nearly as I can recall—I know Dr. Clements was there, Dr. F. K. Power, I was there, and I think Dr. Fred Thompson was there. And that was the first meeting at which we discussed the formation of such an organization.

The reason I say this has a bearing on not working for commercial hospital associations is because, at least as far as I was concerned, and I am sure this must have operated with other physicians—I have talked to them—I rather found myself in the position of having for several years

participated in a type of practice of which I didn't approve but without realizing exactly what I was doing until
1718 I became interested in the subject of prepaid medicine through this meeting and began to study prepaid medical service, what it was, the best methods of administering it and participated in the formation of this company. And as I went over these things in my mind I began to realize just what sort of thing I had been lending my support to, so it did have a bearing on our stopping this service that I mentioned before.

Q. This sort of thing that you had been lending your support to, is there anything about it other than what you have already explained that impressed itself on your mind that it was something that you didn't care to lend your support to further? A. Well, I am not—there is so much to this I hardly know how to tackle it.

Q. Well, what I would like to know is the whole background of the reasons in your own mind as to why you felt that you didn't care to support that type of a system which you had been supporting up to that time. A. Well, I suppose the biggest—if you try to put it in a few words, I suppose the biggest and most important thing would be that in this system of prepaid medicine, so-called hospital association operation, there is inevitably a third party who stands in some manner, inescapably stands between the patient and the physician, which situation I don't think I need to elaborate on.

I think everybody understands the evils of that
1719 situation. Certainly you do in your profession and you wouldn't want to tolerate any shadow of anything between you and your client, and I don't want any shadow of anything between me and my patient.

Now, that demonstrates itself in many different forms. Sometimes outright interference in the treatment that the doctor wishes to—

Mr. Marcus: Your Honor, I would like to object to this witness making such statements inasmuch as he has already stated that his experience with these hospital associations was extremely limited. From what I gather he was a junior partner in this partnership and all he knows about their experiences was that from time to time in small amounts they cut down the fees.

Mr. Jaureguy: Well, the question is why he ceased supporting that kind of practice, and whether he got it from his experience or from his study or from his contemplation

or got it from a dream it is material in this case for the Court to know the reasons why he ceased to support that kind of a system.

The Court: Continue.

A. I have forgotten where I was.

Mr. Jaureguy:

Q. You said the inevitability of a third person coming between the doctor and the patient— A. All right. So far as my experience was concerned with hospital associations, and it was possibly a little more extensive than I
1720 have indicated—that doesn't matter—it was there, I said that this interference might take the form of direct interference or some difficulty with the treatment of the patient, but the thing that—you asked me why I ceased working for these hospital associations. The thing that impressed itself to the greatest degree upon my mind was not that the interference was worse when I as a physician had trouble with some hospital association, we had difficulty or we had arguments, but the interference was at its worst when I as a physician and the hospital associations were getting along beautifully.

Q. Why is that? A. You see the point? Well, the closer the cooperation between the physician and the hospital association the better their relationship is, the more they are developing some sort of a—I don't know how to express it—but the better the relationship of the physician with the hospital association—you write them letters, they write you letters, you get along fine, you have conferences, you discuss this patient and you discuss that patient and you are working nicely with the hospital association and then you certainly do have something that interferes with your association with your patient over here. He is kind of left out in the cold. I meant, the physician is beginning to be influenced in his treatment of the patient, whether he realizes it or not, in his relationship with the hospi-
1721 tal association.

Q. When they are getting along all right the doctor is submitting to the interference with the doctor-patient relationship and when they are not getting along all right he is protesting it, is that what you have in mind? A. Yes, I think that might express it. At any rate that impressed me, the cooperation made a greater impression upon me than the interference that was protested against. But I think basically and fundamentally it is that situation

which is inevitable in that type of plan which led me to sever my relations with the association.

Now, I had started to trace the development of the Salem Physicians' & Surgeons' Hospital Association. Do you want me to go back to that?

Q. Yes. We got diverted. Would you go back? A. All right. Following this original meeting of the four of us and discussion—and there were more meetings. Dr. Power then did a great deal of the leg work and spade work and actual work of finding out how to set up one of these organizations. The first thing we stumbled onto, of course, we had in Oregon what we call—I say "we"—doctors—have what we call a hospital association law, and we decided, whether wisely or unwisely I don't know—but at any rate we decided if we wanted to start any kind of a prepaid medical plan we would have to conform to this hos-
1722 pital association law which had been passed in order to—well, I can't say why it was passed. I don't know. At any rate it had been passed I think in 1917 at some time and set forth the manner in which hospital associations could do business. And so we incorporated this Salem Physicians' & Surgeons' Hospital Association under the provisions of that law. We, of course, interviewed and talked to every physician in the city. Some physicians were not interested. For example, a man confining his practice to pediatrics was not interested and obstetrics were not interested because those things were not covered in the contract. But of the physicians who were concerned with that type of practice, so far as my recollection goes, all or all but one or two agreed to join with us in this project.

We financed it by each man obligating himself for $500 in cash, which at that time was a serious obligation I think to all of us. I know it was to me. I mean, that was considerable money, and still is. We also agreed that we would work for this new association for six months without any fees in order to accumulate some funds, get going, and we set ourselves up in business. Our concern at that time was to make this thing successful. The only pattern or previous one we knew of was over in Corvallis a number of years previously. It had failed. I think if anyone were betting I think most of them would bet that ours would fail too be-
cause we were setting ourselves up in business in
1723 competition with some very powerful groups, commercial hospital associations, and we knew it.

The Court: What year was this?

A. 1929, sir.

The Court: When did you come to Salem?

A. 1926. The going was not easy, but the fact is that this Salem Physicians' & Surgeons' Hospital Association did survive, and although it was never what one would call a financial success and was not designed to be, it paid off its doctors after a fashion and kept going, and it got contracts and it got more contracts.

I think the reason it succeeded was because it was found that the men that were concerned with its founding, Dr. H. J. Clements was the first President and I think Dr. Power was the Secretary—I was on the Board of Directors. The men who were concerned with its founding had good, sound, basic philosophy and principles behind them.

This hospital association—I'd like to show you for one thing that just pops in my mind, that this hospital association was not founded in Salem by a group of physicians who wanted to get some of the contract practice business that they were not getting. One might think that because the people who were primarily concerned—

Mr. Marcus: I object to that, your Honor. That is merely a conclusion of this witness.

1724 The Court: Objection overruled.

A. The physicians who were concerned primarily in the formation of the association were the physicians who had the bulk of the business, practice, under the commercial hospital associations. That may be of no importance, but at any rate we weren't on the outs, trying to get them. We had the business. We wanted to set up a type of prepaid medical service which would be on a higher level, higher ethical and professional and moral standard than had been before, and at least some of us—I know I for one, and I know others who have discussed it with me for long hours were sincerely and honestly interested, and still are, even more so to this day, interested and desirous of helping the average individual to have some method by which he might avoid the impact of a very expensive illness; in other words, try in some manner, if possible, to apply the insurance principle to the practice of medicine, which is admittedly difficult if not impossible to do.

Those things were there. It was not a matter entirely of competition for business. We had to compete with the commercial hospital associations, yes, and we did compete with them, which brings again to my mind the questions

that have been raised. I will say here that so far as I can recollect I imagine, as near as I can recollect, all of the physicians who were concerned with that Salem Physicians' & Surgeons' Hospital Association stopped accepting
1725 tickets at some period along in there, stopped accepting tickets and working for the commercial hospital associations. I think it is entirely natural that they did so. They did so not only for reasons I mentioned. I think perhaps I spent more time thinking about the ethical consideration than some others, but quite aside from the ethical considerations, we were a very weak, very poor, very young and very struggling organization. Our interest was to see that this thing succeeded for many reasons, and it just—I don't think any man in there—well, when you are starting a business, you and I go together as partners and we start a business and are trying to get going, you don't go and buy your groceries from the competing grocer. You are trying to help out our store. And we were trying to help out our organization.

This was the first of the physician-owned hospital associations. I don't say that others wouldn't have been formed if we hadn't formed ours. I suppose they would have. But at any rate we assisted others. They came to us. I can remember the physicians in Clackamas County asking some of us to come up and discuss matters with them and give them—you know, tell them how we had done things and met problems.

I remember going to Klamath Falls and Coos Bay and several other places, and these other associations came into being throughout the State, and then eventually that led to the formation of the state-wide organization known as OPS.

1726 Q. Could you tell us about what proportion of doctors in Salem joined the Physicians' & Surgeons' Hospital Association? You may have said that they all do, but I am not sure what you said. A. Yes, all of those who were interested in that type of practice. I don't remember the numbers, perhaps thirty-five out of forty, something like that.

Q. That organization continued until when? A. Well, when it joined the Oregon Physicans' Service. I know I went into the Air Force in 1942 and they joined sometime after that. I wasn't here; I don't remember the date.

Q. Well, when you came back from the service, what was the situation? A. Then, of course, the Salem Phys-

icians' & Surgeons' Hospital Association did not exist any more. It had joined the Oregon Physicians' Service.

Q. Since then OPS has operated in Salem and not the Physicians' & Surgeons' Hospital Association? A. That is correct.

Q. Is it in the nature of what we call a local pool or part of a statewide pool? A. No, sir, it is a local pool. We have a local supervisory committee to carry on the local problems and management. The effect, so far as you are in a community, is about the same if you had never changed from that local organization.

1727 Q. Aside from the administrative and business details which are handled by OPS, is there any substantial difference in the operation now from what it was before you went into the service? A. No, none. The supervisory committee handles the problems now that were handled by what was then called the board of directors.

Q. A different name with the same function? A. That is right.

The Court: Why would you people merge, if you want to put it that way, with OPS, whereas your neighbors in Clackamas County retained a separate organization, as has been testified here? What reasons would motivate you and your group in belonging to one thing and they the other?

A. Different doctors have different ideas as to the best methods of operating prepaid medical plans. Some—I think we are all agreed—I say "all." All the physicians to whom I talked, who have spent much time in the operation of these plans—

The Court: You know what I am talking about.

A. Yes.

The Court: Clackamas County and Coos County have separate organizations.

A. That is right.

Mr. Jaureguy: And Klamath.

A. And Klamath has.

1728 The Court: Are you sure?

Mr. Jaureguy: Yes, the Klamath Medical Service Bureau.

The Court: I thought they were a local pool.

Mr. Jaureguy: No, it is the Klamath Medical Service Bureau.

The Court: Go ahead.

A. I think all the physicians, I know, who have studied this matter are in agreement, and I am firmly of the opinion that in operating a prepaid medical care plan the smaller the plan the better. At the same time, it seems necessary to have an organization of some size—that would get us into the reasons OPS was formed in the first place, and you don't want that.

But enough physicians, however, agreed you needed a statewide organization, and of course there will be inevitably some physicians and some groups of physicians who do not agree with that.

The Court: Like local option.

A. Yes.

The Court: Like local option in the liquor business.

A. Yes. Those individuals who felt that way naturally retained their own local organizations and others who did not joined the state organization. Is that an answer?

The Court: Well, we are developing a lot of things on the subject. You have been active in this field. I just wanted to ask you about that.

Mr. Jaureguy:

Q. As it developed, as I understand it, Doctor, 1729 the only difference of importance between the local pool situation and independent organizations, such as they have in Clackamas, Coos and Klamath Counties, is the administrative and business details of the operation? A. That is correct. Of course, in Salem we hardly feel that because the OPS has one of its offices in Salem, and it is very much like your own—I can see very little difference, if any.

Q. You mentioned the OPS here. Did you have anything to do with discussions that led up to the organization of OPS? A. Yes, sir.

Q. The articles of incorporation were filed, as I recall, in December, 1941. Did you have an office in the State Medical Society at that time? A. I was President of the State Medical Society.

Q. When OPS was formed were you elected to an office in OPS? A. I was President of OPS.

Q. So you had nothing to do with the discussions and other details that preceded the actual formation of OPS? A. Yes, sir, I did.

Q. Just tell us about that, like you have about the Physicians' & Surgeons' Hospital Association. Go ahead and tell us. A. This idea of a statewide organization came about, of course, gradually over a period of time. There had grown up in Oregon, as I recall, maybe eleven or thirteen, or some such number, of these local hospital
1730 associations.

Q. You mean local doctor-sponsored hospital associations? A. Yes, doctor-sponsored hospital associations. There were a good many reasons, at least we felt rather compelling reasons, why a statewide organization—

Mr. Marcus: Objected to, your Honor. I ask your Honor to have the witness confined to his own reasons.

A. All right.

Mr. Jaureguy: Wait a minute. I want to see if the Court is going to instruct him that way.

The Court: Mr. Marcus, I assume this objection will be raised with anybody, as to anybody. I assume a witness goes on the stand and is sworn to tell what he knows, in any profession, from any source of information or many sources of information.

Mr. Jaureguy: This is Dr. Baum. I think your Honor said Martzloff.

The Court: No, I said a witness. I say, when a witness goes on here I assume he is talking about the things he knows about.

Mr. Jaureguy:

Q. Of course, Doctor, I don't want you to tell what other doctors thought unless you are talking about discussions which you had, as to how they expressed themselves. Mr. Marcus does not want you to tell what somebody in Klamath County talked about if you never talked to them in Klamath County. You get the idea, don't you?
1731 A. Yes, I think I can give what I know about as well, using the personal pronoun, as far as that is concerned.

The Court: That will be hard to do. Doctors call themselves "we."

Mr. Jaureguy: Yes, and when somebody, some people

discuss a thing and somebody tells about it, he is going to say "we."

The Court: I know one doctor up here has called himself "we" for thirty years. I didn't catch on to it for about twenty years. I wanted to know who his partners were. He would say "We saw this" and "We did that."

Mr. Jaureguy:

Q. All right, Doctor, go ahead. A. These local doctor-owned hospital associations, bureaus, or whatever you want to call them, met with certain difficulties. One would be a large employer who had employes scattered throughout the state, a large employer who wanted to write a contract covering all his employes, which could be done through cooperation with various of these eleven locals, but it was awkward.

Another thing was uniformity. I do not believe we have uniform contracts yet; I don't care if we ever do, for that matter, but, at any rate, they wanted to have sufficient uniformity so any citizen in the State of Oregon might have essentially the same coverage wherever he moved to or might move to in our state, at least pretty much have the same coverage, not have to go through too much red tape in order to get medical service.

1732 Another reason was that many people looked with some disfavor upon these smaller hospital associations, simply because of their small size. Some people have respect for a corporation which has a good deal of money or strength, and very rightly so, because that is particularly so in the case of contracts of workmen in a plant where there may be, for instance, two or three hundred workmen. In the early days you dealt with the employer; now you are more apt to deal directly with the employes through the union, and you are asking them to more or less pay their dues or premiums monthly and then trust your company to deliver medical service and pay hospital bills, et cetera, et cetera.

If somebody comes along representing a big corporation, they are more apt to feel that they are safer than some little outfit in Salem or Klamath Falls. So, we felt the very size might add strength, although in this type of operation I think it actually does not, but it would perhaps seem so to the public.

So, for such reasons as that this discussion of a statewide association came up repeatedly over a period of years. I couldn't tell you exactly when it started. You people who

have been going back through the records, probably you lawyers have a better idea than I have. You will see, I am sure, references to it at different meetings. However, these discussions would come up and it was talked about. I
1733 have had probably as much to do with it as anybody because I felt we did need a statewide organization. As a matter of fact, at that time I think probably I would say that I felt rather strongly that we could safely go to a statewide organization. I would not want to go any larger than that, but I felt we could probably safely go to that size and still operate prepaid medical care, and keep the evils to a minimum.

We must remember, also, that during those years that motivation of caring on prepaid medical care plans for the benefit of the public, and, indirectly, for the benefiit of the physicians, quite aside from the type of practice which had previously existed, was increasing.

What I mean is this: The commercial hospital associations, if you will examine their contracts you will find they were primarily interested in what we might term the industrial type of business. That is the profitable type, too. I do not believe—maybe I should not say this as a witness, but I do not believe they were motivated particularly by a desire to supply prepaid medicine to the public at large.

A great many physicians who were associated in these local bureaus and later in OPS were motivated as such. A great many of these physicians— and I have talked to them and I know what they said—cared little or not at all for what might be called the commercial or industrial aspect of this situation, this operation. A great many of them cared, in fact felt that we should have a plan
1734 for what was called the low wage earner, the man who earned less than $3,000 a year, and in some cases the level was set as low as $1,500 a year—that we should develop plans to benefit that individual who evidently could not pay much in the way of doctor bills, and that the doctors had no business and, in fact, that nobody had any business in trying to develop prepaid medical care plans for other people who could pay their doctors bills.

So, you had differences of opinion, of course, among physicians who were cooperating and active in this movement, but the general aspect of attempting to set up prepaid medical care for the public, quite aside from industrial operation, came more and more to the front during these years of 1939, 1940 and 1941. Otherwise it never would have been possible because people in the medical society—

Mr. Marcus: That is stating a conclusion, your Honor.

The Court: He is giving his opinion and he certainly can give it as an expert in the field. Continue.

A. Actually, the formation of Oregon Physicans' Service, some aspects of that are interesting, and I will give you my own ideas only on that.

At the time the Salem Physicians' & Surgeons' Hospital Association was formed I was firmly of the opinion that this inevitably was a business; although I did not like to engage in a business, it was a business that should be
1735 done or carried on by the physicians without any reference to the Medical Society, and it was so done. We did not consult the local Medical Society. We did not ask for any sponsorship; we did not ask for funds, and it had no connection at all with the Salem Physicians' & Surgeons' Hospital Association and the Marion-Polk County Medical Society. I felt then and I still believe that is the proper way to do it. Some physicians, with whom I have talked did not agree with me. They feel that these doctor-owned hospital associations are also apt, shall we say, to get out of line and do things that are not good, and that they are better operated if they are directly under the sponsorship of a medical society, local or state. I did not believe so. I think the medical society can control them just as well if they are not directly sponsored. At any rate, that is the way the Salem Physicians' & Surgeons' was set up, but when we come to the OPS we find a different proposition.

It was possible to go to all doctors in Salem, in fact the community, and discuss it with them and ask them if they wanted to come in and form such a group, and told them that it would cost them so much money and here is what we are going to do.

However, it was manifestly impossible—none of us had the time which would have been required in going around and interviewing every doctor in the State of Oregon; couldn't do it. We wanted this thing to be on a statewide basis and we wanted statewide representation on
1736 whatever board ran the organization.

The upshot of it was, after considerable study and thinking, that I could find no other organization which could step in to represent all the doctors and assist in the setting up of a statewide hospital association except the Oregon State Medical Society. They were the only organization that could do it. As far as I am concerned, that

is the reason they were asked to do it. They didn't want to do it, but I was thinking—

There were a large number of doctors on the Council at that time who had no desire to have the State Medical Society engage in any type of activity, in that particular type of activity, and some of them in the Council actively opposed that. However, there was no one else to do it, and enough physicians felt it should be done, so that it passed at the next meeting, and it was done, and the Oregon State Medical Society then did sponsor the formation of Oregon Physicians' Service and, through its mechanism, assisted in the selecting of the Board of Trustees who were representatives throughout the State of Oregon and from which Board of Trustees was selected a Board of Directors to actually operate this organization.

As far as I was concerned, in setting up the Oregon Physicians' Service, I would have liked to set it up as an amalgamation or merger of all the then existing local
1737 organizations. That was not possible because many of them valued and were jealous of their local autonomy and they would not come in. Others might come in, but they wanted to see how it would work out, et cetera, et cetera. It was impossible to get these people to amalgamate.

I said—and I am using the pronoun "I" in order to avoid objections. I do not want to sound like I ran the show. I didn't. I am telling you what I did. Some of the things I am talking about never turned out to be what was actually done, and some of them did. I felt all we could set up was an organization, and then if these locals wanted to join, fine; if they did not, of course the thing would probably flop.

So, when the Oregon Physicians' Service was actually set up and established, it did not have much of anything; it was pretty much of a paper organization. It did get contracts, however. The war came on about that time, increasing the industrial population of the State of Oregon. There was more industrial business. The general idea of prepaid medicine began to spread. Individuals wanted in; groups that had never been covered before wanted to come in, and then the various local organizations began to join and we had the organization as you know it today.

Mr. Jaureguy:

Q. Just one aspect of this—I think everybody agrees on

this, but for the purpose of the record there have been, as I understand it, three different types of doctor-
1738 sponsored prepaid medical care plans in various counties. First, you have the local association like the Clackamas County Medical Society and the Coos County Medical Society and the Klamath County Society; then local pools like in Marion County and in Jackson County; and other counties; and then the statewide organization, the OPS, that covers the rest of the state. Is that a correct statement? A. Yes, that is correct, although I am not now connected with OPS, you understand.

Q. Yes. A. And have not been since I went into the service.

Q. Except as a cooperating physician? A. Well, as a cooperating physician. I mean, I am not an officer.

The Court: Have him explain what a local pool means. What does "local pool" mean?

Mr. Jaureguy:

Q. Yes, I will ask you to expain that, although, perhaps, without using that expression, maybe you have. What does local pool mean? A. Local pool applies to money. It means, for example, in Salem all the money that is collected from the contracts in Salem is paid out to the doctors there, rather than being placed in a statewide pool, which would be all over the state.

The Court: Why are there local pools some places and not in other counties?

1739 A. One reason, of course, is that in some counties the population is so thin that a local pool would not be able to operate it; it would be apt to go broke. The main reason, however, is that in some counties that are populous the doctors believe they will get more money. They don't want to turn loose of their money and have it go out in the state and so there will be a situation where Salem money may be lost in Clackamas County, and so on.

The Court: Has Multnomah County a local pool?
Mr. Jaureguy: Yes.

A. Must be four or five at least.

Mr. Jaureguy: Yes, we will have evidence on that.

Q. In the case of the local pool do the doctors of the

county have more supervision and control over the working of OPS than they did in the pool? A. No.

Mr. Marcus: Objection, your Honor. This witness has just testified he had no connection with OPS, has had no connection with OPS since he came back from the war.

The Court: Objection overruled.

Mr. Jaureguy:

Q. What about local supervisory committees? A. Every area is supposed—it may be a county; sometimes two counties, depending on the geographical distribution. Every area is supposed to have a local supervisory committee, the purpose of which committee, as I see it, is to help operate the plan in that area. Some areas are
1740 negligent and don't do it, but they are at least to have that committee, and in most areas I think it functions. I know it does in Salem, very actively.

Q. You went into the service when? A. April, 1942.

Q. What branch of the service were you in? A. Air Force.

Q. Were you out of the States during most of the time you were in service? A. Yes.

Q. Then, you returned when? A. January, 1946.

Q. At that time OPS was in operation, as I understand it? A. Well, it was in operation before I left.

Q. Yes. And it was in operation when you got back? A. Oh, yes.

Q. Down there in Salem the Physicians' & Surgeons' Hospital Association had gone out of business and the OPA local pool was operating?

The Court: OPS; cut that out, will you?

Mr. Jaureguy: Well, we will say "the little OPA was operating."

Q. Since you came back did you treat patients who are members of commercial hospital associations? A.
1741 Yes, sir.

Q. Is your arrangement with them or your dealings with them any different than it was before, in the '20s, as you referred to, when you were taking care of their patients? A. Well, we no longer—I no longer bill the hospital association direct. I treat the patient as a private patient.

Q. What does that mean? A. A patient comes in my office like any other patient and receives treatment and is billed for the treatment.

Q. Then, if he wants to he can collect from his hospital association? A. Well, I know from conferences and conversations with patients, of course, that that is what happens; the hospital association reimburses the patient, because the patients tell me that and they ask me for an itemized statement to send in to the hospital association. I know in our area that has been going on for many years, of course, and commercial hospital associations still have contracts in Salem, and they have contracts around Salem, and of course these patients, many of them, come into my office, and the patients themselves almost universally know that I do not accept the tickets; Many of them come in and say, "Now, Doctor, I understand you don't accept tickets, but I want you to treat me," and so forth. Sometimes I don't know that they are under a hospital association.

Q. Are there some reports, some bills made out so they can collect from the hospital associations? A. I
1742 fill out any report that they ask me to.

Q. And they ask you to fill out some, do they? A. Yes.

Q. Then, when you make a charge to the patient who you know is under a commercial hospital association plan, do you discriminate against him in any way for that reason? A. No, charge my regular fees.

Q. Is there any discrimination by you or by your office in any way against a patient because he is a member of a commercial hospital association? A. None whatever.

Q. The Marion-Polk Medical Society, that covers the doctors of Marion and Polk Counties? A. That is right.

Q. You have been talking about Marion County. What about Polk County? Is that connected with your local pool of OPS, or does your local pool just cover Marion County? A. The local pool covers what you might call the Salem area, what you might call the Salem trading area—these physicians who operate in that vicinity, whether it is Polk County or Marion County, it doesn't matter.

Q. Do you know what the practice is, generally, in Polk County, whether they accept tickets of commercial hospital associations? A. The doctors do in Marion County and Polk County, also.

1743 Q. Do you know whether there is a greater proportion of them in Polk County who accept tickets than in Marion County? A. I don't know, no. I don't pay much attention or never have. I mean, I don't know whether a doctor accepts tickets or does not. The question has never

been raised in our area as to whether a doctor accepts tickets or not. I don't know who does.

Q. What about Dr. Bossatti of Dallas? What do you know about him taking tickets? A. The only reason that I know—I know Dr. Bossatti quite well and I know that he works for a commercial hospital association, and the reason I remember is because—I think maybe that is what you refer to, because you were smiling.

The Court: He was a witness here.

Mr. Jaureguy: Yes, our witness.

The Court: He told us his own story, didn't he?

Mr. Jaureguy: Yes, he told his story, but this is a different story. I won't say it is different; I think it is going to be corroborative.

Mr. Marcus: Just a minute—

Mr. Jaureguy:

Q. Go ahead, Doctor.

Mr. Marcus: I will have to object to hearsay and evidently we are just going over the same thing.

The Court: Go ahead.

A. What I was about to say I don't imagine is hearsay, but the reason I remember Dr. Bossatti does take tickets is because at the time the United States Marshal came
1744 to Salem and served me with papers in this suit he asked me where Dr. Bossatti lived, and I told him over in Dallas, and said Dr. Bossatti was the President at that time of the Marion-Polk County Medical Society, and the Marshal said he was going over there to serve the papers, because he was President of the Society, and our Society was also a defendant, and that struck me as rather ludicrous that this doctor who cooperated well and worked with the hospital associations was being served papers the same as I was. That is the reason I remember that he, as an individual, does take them.

Q. In electing officers of the Marion-Polk County Medical Society, is there any discrimination against the doctors who take tickets as compared with doctors who do not take tickets? A. No, there has never been any discrimination against doctors who take tickets in our area in any manner or for any reason other than the fact—other than what might be called individual discrimination.

Mr. Marcus: Your Honor, I move to strike that out. How does this doctor know there have been no instances

of discrimination? He has already testified that during the war that he was away from that area.

The Court: Motion denied.

Mr. Jaureguy: Go ahead.

1745 A. There is no—I suppose I should say there is no instance of discrimination in that society or in that area that has ever come to my attention.

Mr. Jaureguy:

Q. When you were on the Council of the State Medical Society do you know whether there were members of the Council who cooperated with commercial hospital associations? A. That is hard to remember because, as I say, I don't pay much attention or always know whether a man does or doesn't. I can remember one man, yes, because I remember him discussing it before the Council.

Q. That is while you were a member of the Council? A. Yes.

The Court: We will take recess.

(Short recess)

Mr. Jaureguy:

Q. Doctor, in so far as you are concerned has there ever been any desire that OPS become a monopoly in the prepaid medical care field?

Mr. Marcus: I object to that, your Honor. It is merely a conclusion.

The Court: Overruled.

A. Do I have any desire for OPS to become a monopoly in the prepaid medical care field?

Q. Yes. A. No.

1746 Q. Why not? A. Because I think a monopoly is always bad. It is bad for anybody. Would probably be the ruination of all OPS or any other organization that had a monopoly in anything.

Q. And has that been your feeling on the matter consistently, your thoughts on prepaid medical care? A. It has.

Q. And I want to ask you whether you either individually or in collaboration with other doctors have ever endeavored to coerce any doctor not to cooperate with commercial hospital associations. A. I have not.

Q. Or have you either alone or in cooperation with other doctors ever tried to coerce any hospital into not permitting doctors on the staff to cooperate with this prepaid medical care, commercial hospital associations? A. I have not.

Q. Or have you either singly or in cooperation with any other doctors ever tried to—or any other persons—ever tried to coerce hospitals into not accepting patients because they were members of prepaid medical care plans? A. I have not.

Mr. Marcus: I would like to make the general objection to these questions and answers on the ground that they go to no issue in this case.

1747 The Court: They will be admitted subject to the objection.

Mr. Jaureguy: You may take the witness.

Mr. Marcus: Your Honor, you asked a question, how many pools there were in the State. Well, we did stipulate with the Defendant as to that. It is in our pre-trial stipulation of facts, and, according to that, in addition to the State pool there are 17 pools.

The Court: The State pool then would be the rest of the State?

Mr. Marcus: Yes, that is right.

Cross Examination

By Mr. Marcus:

Q. You just testified that you never coerced anyone either by yourself or together with any other member of the Society from dealing with the hospital associations, is that so? A. That is correct.

Q. Isn't it true, Doctor, that you were on the Board of Censors which kicked Dr. Johnson and Dr. Steele out of the Medical Society? A. What Board of Censors of what medical society?

Q. State Medical Society. A. State Medical Society—it doesn't have a Board of Censors so far as I know, and never did have a Board of Censors.

Q. Is your answer Yes or No? A. The answer is
1748 No. I don't remember being on any such Board.

Q. Doctor, I have here Exhibit 1949 which is a transcript that recites:

"Before the Council of the Oregon State Medical Society. In the matter of the appeal from the action of the Council

of the Multnomah County Medical Society in expelling from membership Dr. John R. Steele and Dr. A. H. Johnson."

The Court: Give him the date.

Mr. Marcus: That is November 7, 1936.

Then it states that the following officers were present, and among those is Dr. W. W. Baum, Third Vice President. Does that refresh your recollection? A. You asked me or stated or made the remark that I was on a Board of Censors. This organization you are speaking of I believe is the Council of the Oregon State Medical Society. Yes, I was a member of the Council of the Oregon State Medical Society, but they are in no way a Board of Censors so far as I know.

Q. Without arguing the point, Doctor, I understood when the Council acted in this capacity they did become a Board of Censors, but aside from that, you did participate with others in kicking Dr. Johnson and Dr. Steele out of the Society? A. Not if I understood what the proceedings were at that time I didn't. If I did, it was unwittingly.

1749

Q. You are content to abide by what is stated in this transcript then I assume? A. Well, I haven't seen it. I am not sure what you are referring to. That is quite a while ago. I suppose it is accurate or you wouldn't present it.

Q. Well, your counsel had this and we got it from him.

Mr. Marcus: Your Honor, while the witness is on the stand I would like to read from Exhibit 4, which comprises the constitution and by-laws of the Oregon State Medical Society.

The Court: Wait so he can give his attention to it. One thing at a time.

How many pages of that that you are looking at, Dr. Baum?

A. It is quite an extensive document, fifteen or sixteen pages.

The Court: Don't read it then. Either take him off and let him read that now or go to something else, Mr. Marcus. Can you go to something else?

Mr. Marcus: Yes, I can go to something else.

The Court: All right. Then he can read that at recess.

Mr. Marcus:

Q. Doctor, I just stated that it was my understanding that the Council acted as a Board of Censors in matters of this sort, and I believe you disagreed with me, is that right?

The Court: He is going to read that and then you can resume.

1750 Mr. Marcus: This is on something else. It is on the Council—

The Court: The two things go together. Can you go to some other subject?

Mr. Marcus: Yes.

Q. Doctor, you stated you have been the President of the State Medical Society, is that not so? A. That is right.

Q. Could you give us the approximate date? A. September, '41 I took office, and till whenever the annual meeting was that year—it is usually September—until the following year, the annual meeting, September, '42. However, after April of '42 I was President, you might say, in name only because I was in military service and was not here. The Vice President functioned in my absence.

Q. And have you held any other office in that Society? A. Yes. At this time this paper you showed me, at that time I was Third Vice President, and I have also been Councilor from my district, representing my district.

Q. About how long have you been on the Council? A. Several years prior to 1941.

Q. But since January of 1936? A. Yes.

Q. And, Doctor, have you ever been a delegate of the State Society to the American Medical Association?

1751 A. I am now an alternate delegate, and at the meeting last June the Delegate, Dr. McLean, for whom I am alternate, was unable to attend the meeting and I attended in his place. That is my function, of course, as an alternate.

Q. And you have been an officer of the Marion-Polk County Medical Society? A. I was Secretary for a number of years and I was President one year.

Q. And that has been since January, 1936? A. I am ashamed to say I can't remember the year I was President. I think it was about 1936. I don't remember the exact year.

Q. It was probably since that time though, wasn't it, since January of 1936? A. I don't know. It might have been before. I wouldn't be sure. It was about that time I was President.

Q. How about the time you were Secretary? A. I believe I was elected Secretary in '27 or '28, and I served for a number of years until I was President, but I couldn't give you the exact number.

Q. Now, Doctor, in listening to you this morning I got the impression that you have given a great deal of time and a good deal of study to the question of prepaid medical care, is that not so? A. A good deal, yes. It interests me.

Q. And it is true, is it not, Doctor, that you played a
1752 considerable part in formulating the policies of the State Medical Society with respect to prepaid medical care and hospital associations. A. That is a very difficult question to answer. Perhaps in my effort to use the pronoun "I" to this testimony you have listened to I may have given the impression I was a more important individual that I actually am or was ever. As these matters come up for discussion in the Medical Society it is very difficult or impossible for the person there to say who contributes the most and who wields the most influence, and, as you know from similar meetings, it isn't always the man that is occupying the President's chair, maybe somebody else. I wouldn't want to say that I was particularly influential in formulating the policies, no, not any more than any one of perhaps a dozen other people.

Q. Well, let's say you were as influential as one of a dozen in the State Society; that is true? A. Yes. I attended and participated in discussions, sure.

Q. And you were on numerous committees of the State Society which had to do with bringing in recommendations as to prepaid medical care and relationships with hospital associations, is that not so? A. I only remember of one committee that dealt with that. That was the Committee on Medical Economics. That dealt with that directly.

1753 Q. And you were on that committee? A. Yes.

Q. You were also on the Committee on Contract Practice of the State Society, were you not? A. All right, yes. I remember that vaguely. I am not too sure.

Q. Are you on any committees of the State Medical Society at present, Doctor? A. No.

Q. Were you last year? A. Yes.

Q. What committee or committees were you on? A. I was on the Committee on Public Policy.

Q. You have acted as a spokesman for the State Society, have you not, with respect to prepaid medical care? A. I don't ever remember of having done so, no.

Q. You have made speeches, have you not, which have

been reprinted in the Northwest Medicine and you have made speeches to some of the County Medical Societies with respect to prepaid medical care, have you not? A. I have made speeches with respect to prepaid medical care, but I have never made any speech anywhere any time that I recall other than as an individual. I don't remember ever representing the State Society. I may have—other than this meeting in Atlantic City last June, the question
1754 of prepaid medicine was discussed in the House of Delegates and I think I got up and made some remarks. I was representing the Society then. That is the only time I ever remember.

Q. You were on a committee appointed by the Council, were you not, to make a study of problems of contract practice in the local communities in 1937? A. What was that committee again, please? I am sorry.

Q. A committee to study the problems of contract practice in local communities. A. I don't remember it, frankly.

Q. I show you Exhibit 2034 and ask you to look at it and see if that refreshes your recollection. A. Yes, I remember that committee.

Q. Doctor, I believe on direct examination you said your local society never had occasion to act upon prepaid medical care plans or the relationships of doctors with hospital associations. A. I don't remember testifying to that. Now, you are stating that I testified that our local society never had occasion to act on prepaid medical care plans or the doctor-patient relationship. Now, I am not, I couldn't testify as to that. They may have taken some isolated action at some time on something about prepaid medicine. I don't know.

Q. Well, do you recall any such instance when you were present? A. No, I don't.

1755 Q. I have here Exhibit 1038 which is a regular meeting of the Marion-Polk Medical Society for May 13, 1941.

"Dr. Baum discussed the Farm Security Administration's outline of medical care for those farmers who have government loans. He pointed out that the plan did not seem a sound one for the reason that there would not be enough money to go around, and then the probable outcome would be that the physicians would be receiving a very meager or probably no fee at all for their services. The other objection was that the plan was a lay-owned organization and supported as such supposedly."

Now, do you recall that, Doctor? A. That meeting? No. I am sorry. I remember at the time when the plans were endeavored to form to help the rural population and I remember the difficulties inherent in those plans and the things that I objected to on some parts of those plans. I do not remember making that report to the County Society, however.

Mr. Jaureguy: Let me see that.

Mr. Marcus:

Q. That is not a report. That is a statement you made. A. Pardon me—the statement I made.

Q. Made at a meeting.

Now, Doctor, I asked you a question, whether you had been a spokesman for the Society with respect to
1756 prepaid medical care plans and hospital associations, and I believe you said No. A. I don't remember having been a spokesman for the Society.

1757 Q. Now, Doctor, do you recall a few years ago when a mill was proposed in the State Legislature to make it illegal for doctors to combine to destroy these hospital associations? Did you speak there on behalf of the Society?

Mr. Jaureguy: I want to object to that summary of the bill. The bill is in evidence and you can produce the bill.

Mr. Marcus: I am asking a question.

Mr. Jaureguy: I know, but I have a right to object in the same way you have a right to ask it.

The Court: Does the bill say "destroy"?

Mr. Jaureguy: No.

Mr. Marcus: I believe it has language of that sort, your Honor. As long as the witness and I understand one another, I don't think we need to stop at that.

Mr. Jaureguy: Just a minute.

A. I would not know what bill you refer to if I had not read the testimony of yesterday.

Mr. Marcus:

Q. You did read the testimony of yesterday? A. In the newspaper; consequently, I know what bill you refer to.

The Court: It is admitted it was known as Mr. Bechtold's.

Mr. Marcus: I have no reason to know it was Mr. Bechtold's bill, but I understand it was sponsored by a hospital association.

The Court: National.

1758 Mr. Marcus: I don't know personally whether it was National or any of the others.

The Court: You should know.

Mr. Marcus: No, your Honor. Why should I? I know the National sponsored it, at least from what I have been told.

The Court: Well, I guess you know the bill we are talking about.

A. Yes, sir: I do. I am quite sure I do.

Mr. Marcus:

Q. I guess we had better get back to the question. The question is whether you spoke on behalf of the Medical Society at that time against the bill? A. Yes, I suppose I was speaking on behalf of the Society because in my recollection at that time, as I told you, I was a member of the Public Policy Committee, and the Public Policy Committee at that time—of course, one of the duties of the Public Policy Committee is for the members to keep track of legislation and to report to the Society and, when called upon, to appear before committees in the Legislature to give their views and ideas.

Q. At least, then, in one instance— A. I did that.

Q. Then, you were incorrect in saying before that you never did appear as a spokesman? A. I suppose you would be viewed then as a spokesman for the Society; although I am giving my own views when I appear as

1759 a witness there.

The Court: What year was that bill introduced?

Mr. Marcus: Well, your Honor, I understand it was somewhere about 1947.

Mr. Jaureguy: I think it was 1947, yes.

The Court: Do you remember? Was it the 1947 Legislature?

A. My recollection is it was at the last session of the Legislature.

The Court: That was 1949.

A. Pardon me. I mean the session preceding this last session. Yes, that would be 1947.

Mr. Marcus:

Q. You were on the committee, were you not, Doctor, of the State Society that drew up a rather lengthy report in 1938 which furnished the basis of the State Society's policy with respect to prepaid medical care plans? A. I don't remember exactly what you refer to. The basis for forming the policy of the State Society, I wouldn't know. I will have to look at that one, too, I suppose.

Q. This is rather large. You can look at it briefly. A. Could I see it a minute? It may refresh my memory. I am not sure.

(Plaintiff's Exhibit 667 shown to the witness.)

The Court: Who will be your next witness?

Mr. Jaureguy: Probably Dr. Fitzgibbon. Possibly he is a short witness. We hope he may be short.

1760 Mr. Marcus: Could we have his name?

Mr. Jaureguy: We may call him today and we may not. If we decide to call him, then I will give you his name.

A. Yes, I remember that committee on medical economics report. I could not just repeat everything that is in that report, but I remember it.

Mr. Marcus:

Q. That was a report which went to the members of the Council, and that was widely publicized among the members of the Medical Society in Oregon and discussed at length, was it not? A. All I know is that it went to the Council and the House of Delegates; whether the members at large ever saw it I don't know.

Q. It is true, is it not, that you participated in action by the Council of the State Medical Society designed to eliminate the hospital associations? A. No, I never participated in any action by any council or any body designed to eliminate hospital associations.

Q. Did you have anything to do with a statement of policy that was issued in the late '30s by the Council, the statement of policy with respect to prepaid medical care? A. I was on the Council, yes.

Q. I am asking you a question. A. You asked me if I participated in the policy or a policy designed to eliminate commercial hospital associations. The answer is no.

1761 I have no desire, never had any, for such action.

Q. I just asked you, Doctor, whether you were on

the Council when the Council issued a statement of policy with respect to prepaid medical care.

Mr. Jaureguy: I object to that, unless the witness can see the statement so he will have some idea what it is about.

Mr. Marcus: I first want to find out whether he can answer it without seeing something.

A. I don't think I can remember the statement of policy to which you refer, no.

The Court: Mr. Marcus has discovered a good doctor. His throat is greatly improved. I wondered, however, how you could expect to keep well when you take your coat off.

Mr. Marcus: I had a cold when I came here anyhow.

The Court: The picture shows you with your coat off.

Mr. Marcus: That is the way I usually work.

The Court: Interested in seeing how you keep in good shape. That is a bad idea.

Mr. Marcus: I always work that way, your Honor.

Q. I would like to call your attention, Doctor, to Exhibit 343, and have you glance at that, and then ask you whether that refreshes your recollection.

The Court: That is another long document. Put that over until intermission.

1762 Mr. Marcus: All right.

A. I remember the meeting referred to, but I don't remember all the details that are in that statement of policy. It would be impossible to do so. I remember that meeting and what was discussed, yes.

Mr. Marcus:

Q. Doctor, it is true, is it not, that from time to time you have informed the local medical societies to which you belong about the policies of the State Medical Society? A. I told you I was on the Council of the State Medical Society, as a councilor from my district, and it is a duty of the councilor to return to his local society—he is supposed to do it once a month, but I never did and don't now, but you are supposed to go to your local society and report what went on at the Council meeting. That is true, and I have done that.

Q. Doctor, I have come across references in these docu-

ments to the Pacific States Medical Executives Conference. Could you tell us something about that? A. That was a rather informal meeting or series of meetings. By "medical executives" they mean officers in the State Societies of the Western States. I can't tell you who originated the idea, but somebody did—somebody thought that it would be a good idea—they would have no formal organization, they would have no power—that we would have these meetings and discuss problems of interest to the various states of the Western Slope. I attended at least one of those meetings and maybe more.

1763 Q. About how long would you say it had been in existence? A. I don't know. Before the war, of course.

Q. It started before the war? A. Yes, the meetings that I attended. I have attended no meetings since then.

Q. I suppose other members of the Society have attended those meetings? A. At the meeting I attended I was just the one member from Oregon there.

Q. I wanted to know whether you knew whether it has been common practice for representatives of the Oregon State Medical Society to be at these meetings, the Pacific States Medical Executives Conference? A. I don't know whether they still meet. I haven't heard of it since the war.

Q. Doctor, you were one of the incorporators of OPS, weren't you? A. Yes.

Q. You were one of the Directors, also? A. Yes.

Q. I think on direct you stated that you had no further connection with OPS after you returned from the war excepting being a participating physician? A. Well, I remember now that—I suppose you would call it a connection with OPS—I was on the local supervisory

1764 committee in Salem for a couple or three years after I came back from the service, until last year. I had that much connection.

Q. After you returned from the war you also attended meetings of OPS yourself, did you not? A. You mean the Board of Directors?

Q. Yes. A. I think I have been to one or two when I was in Portland; I think they invited me to be present, yes. I couldn't tell you how many. I think, however, I have been present at one or two.

The Court: What is your native state, Doctor?

A. I was raised in Illinois. My native state—I was born in Wisconsin but only lived there about two weeks.

The Court: What town in Illinois?

A. Shelbyville.

The Court: How did you happen to come West, Doctor?

A. Always like the West, always wanted to come West.

The Court: There is too much cold back there?

A. Well, that is a part of it. I do like warm weather very much, if we ever get any.

The Court: You came to the wrong place, then.

Mr. Marcus:

Q. Doctor, have you ever had any connection with the Northwest Hospital Service Plan? A. That is what we commonly call the Blue Cross?

Q. The Blue Cross, yes. A. No, I am not as-
1765 sociated with that.

Q. You have attended some of the meetings, have you not? A. As I recall it, a number of years ago I think I was appointed to attend some meetings and conferences of the Northwest Hospital Service Plan. I am a subscriber to it now, me and my family are covered by it.

The Court: Do you get medical service, too?

A. No, sir, your Honor, just hospital under that.

The Court: Why are these associations called "hospital associations"? Is that the way they started? National Hospital Association? Industrial Hospital Association, and so forth?

A. I can't answer why, now, but it causes difficulty because many people do not understand it.

Mr. Marcus:

Q. I understand from your answer that there was a time when you participated in meetings of the Northwest Hospital Service Plan or Blue Cross? A. Yes.

Q. I believe you stated you are a firm believer in there not being a monopoly? A. That is right.

Q. You are against monopolies?

The Court: Do you like those two raises we have had from Blue Cross in the last year or so?

A. You mean raises in premiums?

The Court: Yes, the Blue Cross.

1766 A. I subscribed—I have only had one raise because I became a subscriber just a little over a year ago.

The Court: I think we subscribers will have to get together and look into the management.

Mr. Marcus:

Q. Doctor, I have here Plaintiff's Exhibit 1567, Minutes of the Meeting of the Northwest Hospital Service Plan, Trustees, at Good Samaritan Hospital, December 31, 1941. Various persons are listed, including yourself. A. That is right. Do you find on that list as present also Mr. William Gahlsdorf, of Salem? That will help me to identify the meeting.

Q. Yes. A. Yes, he brought me to that meeting.

Q. It is stated here that a committee was appointed to explore the possibilities of a working arrrangement with the Medical Society bureaus—What do you understand by Medical Society bureaus? Is that the Bureau of Medical Economics? A. I am not sure whether they are referring to the Bureau of Medical Economics or whether they are referring to these local doctor-owned hospital associations that were sometimes called bureaus. I don't know without the context—

Q. It goes on to say that the committee made the following report: (1) That all participating hospitals in the Northwest Hospital Service Plan enter into a binding agreement among themselves, ratified by their respective boards, under which they will not admit, except
1767 as private patients, anyone holding a contract with insurers other than Northwest Hospital Service Plan or other like hospital service plans approved by the American Hospital Association.

It goes on to state that this was voted on—read and voted on section by section, and each section was adopted by a vote.

Do you consider that section which I have just read to you as a section which represents a belief or an opinion contrary to monopolies? A. It is rather difficult for me to look at it as a monopoly. Let me say, also, that this is the action of the Northwest Hospital Service or the Blue Cross, in which I had no part. I was at that meeting as, you might say, an observer. This is my understanding of

this thing: The Northwest Hospital Service Bureau sells hospital service on a prepaid basis, and I have told you I am a subscriber. All right. Apparently, they don't say here they should accept patients of competing plans with theirs, you see, except as private patients. I don't get the connection with monopoly.

Q. I assume that is your view, too, is it not? A. No, I have never said what hospitals—I would hesitate to put all the rest of the hospitals—

Q. No, I mean one organization accepting patients from another organization? A. One organization does
1768 not accept patients of another organization, except as hospitals.

Q. Under prepaid medical care plans? A. My feeling is that hospitals should take patients of prepaid medical care plans, just as they take OPS patients, and charge them the regular rate, the Plan paying the bill, that there should not be any type of arrangement which gives a cut-rate for National or Industrial or OPS or anybody else, because then we would have the private patient as the guy who is really paying the bill, the fellow in the private room.

Q. Am I correct in assuming, then, your opinion is that there should not be closed panels for any of these prepaid medical care organizations? A. That is correct.

Q. What were you doing at this meeting? Why were you there? A. As nearly as I can recall, Bill Gahlsdorf—

Q. This is a meeting of the Board of Trustees? A. Bill Gahlsdorf invited me to attend the meeting. I remember being there and he took me up there. If it was for a specific purpose, I have forgotten. I don't know.

The Court: I never could understand why the Blue Cross is in this case. There is no charge about conspiring against the Blue Cross?

Mr. Marcus: No, so far we have merely brought the Blue Cross in to show that these defendants for a period of time were seeking to eliminate competition be-
1769 tween themselves and the Blue Cross.

The Court: Is there any proof?

Mr. Marcus: Yes, there is documentary proof.

The Court: What is that?

Mr. Marcus: Minutes of meetings, your Honor, and various reports, reports of negotiations. We had one witness on the stand yesterday or the other day—the day before—who discussed negotiations.

The Court: Do you admit that, Mr. Jaureguy, that there is documentary proof here? Do you admit that there is documentary proof that these defendants were seeking to do something damaging the Blue Cross?

Mr. Jaureguy: No. I could make a very brief statement as to what my understanding is, as shown by the documents in evidence.

The Court: All right. Go ahead.

Mr. Jaureguy: And that is on one or two occasions the doctors did suggest that the hospitals, members of the Blue Cross, do not accept tickets of any prepaid medical care plan excepting Blue Cross, at one time, without even the knowledge of the doctors of the Medical Society—and I am speaking of 1944 or thereabouts. They did adopt such a resolution, and the only prepaid organization that was ever notified they were not going to accept their tickets was OPS. Before they notified National or Industrial, they abandoned the idea. Those are the facts.

Mr. Marcus: We are content to rely upon what 1770 is in the documents, your Honor.

Q. It is true, Doctor, is it not, that the Physicians' & Surgeons' Hospital Association, to which you belonged for a number of years, had a closed panel? A. That is not true.

Q. Could a member go to any doctor he wanted to? A. A subscriber?

Q. Yes. A. That is, in my mind, not the same thing as a closed panel. He could only go to a cooperating physician.

Q. That is true with respect to the Oregon Physicians' Service? A. That is correct. I am not sure you understand my idea on that, Mr. Marcus.

Q. I just asked you a question. You will have opportunity, I suppose, on redirect to explain.

Mr. Jaureguy: I move that the witness be permitted to give his explanation now.

The Court: He may.

A. I do not want you to be confused as to what my idea of a closed panel is. The ideal condition in any prepaid medical plan is an open panel—is no panel. That is what I am trying to say—so that a patient is permitted to go to any physician who is legally licensed to practice medicine in the area. However, it is impossible to have a situation where every physician in the community is willing to or wants to be bothered with this practice of hand-

1771 ling it by that method. Therefore, patients can only go to those doctors who choose to do that work. That might form, then, what you might call a closed panel, but that is not my idea of a closed panel.

My idea of a closed panel is a panel of physicians who are chosen for the specific purpose of more efficient operation of the plan and usually by "more efficient operation" is meant more efficient financial operation. That is what I mean by a closed panel.

Q. Let's take your panel, I mean your local association. Is it your idea—I just want to find out. Do you have, in your mind, an open panel in your organization? A. Yes.

Q. Did you have, I mean? A. Yes, we had all the physicians who would be interested and would do the work.

Q. Could physicians in any other county—Was a physiin any other county eligible? A. Yes. The Salem Physicians' & Surgeons' Hospital Association was not set up on county lines. As I recall it, it was a trading area and went over into Polk County.

Q. How about OPS local prepaid medical care organizations, are they limited geographically? A. Our local people in Salem take cases from across into Polk County.

1772 Q. Let's forget county lines and say "within certain geographical areas." A. Yes.

Q. Once you decide the geographical areas the doctors beyond are not on your panel? A. They are if they want to be. There is not much point in a fellow being on a panel if he lives any distance.

Q. Don't you know that all of these prepaid medical care organizations provide in their contracts that they are limited to specific areas? A. What prepaid medical care organizations? You are referring to OPS and local organizations?

Q. Especially the local ones. A. I don't know what you mean, limited to local areas. I am sorry.

(Thereupon a recess was taken until 2:00 o'clock P. M.)

1773 AFTERNOON SESSION.

Court reconvened at 2:00 o'clock P. M., pursuant to recess.

DR. WILLIAM WELLS BAUM, a witness on behalf of Defendants, resumed the stand and testified further as follows:

Cross Examination (Continued)

By Mr. Marcus:

Q. Doctor, this morning we were discussing closed panels, and I believe you said that as you understood closed panels you didn't like them, is that right? A. That is correct.

Q. You don't think much of the Mayo Clinic or John Hopkins Hospital then, do you? A. I don't see that that applies. It is a different type of panel and a different type of organization. What has that to do with prepaid medical care?

Q. I am talking to you about closed panels. They have closed panels. A. Well, there are different panels. We have panels in this room, but they are wood.

Q. I am talking about panels which relate to doctors who might take care of you. You can't go to Mayo Clinic, can you, and take your own doctor with you? A. No.

1774 You can't come into my office and have Dr. Fitzgibbon take care of—well, you can if you want to bring him. My office consists of a certain partnership.

Q. So that closed panels are pretty common in the medical profession. You have a closed panel in your partnership. A. No. I don't consider a panel at all. It isn't my idea of a panel. I don't understand the allusion at all.

The Court: That is the new science of semantics.

Mr. Marcus: There has been a lot of that today, your Honor.

The Court: Not only today.

Mr. Marcus:

Q. Now, Doctor, you said this morning that you were against monopolies. Does that apply also to restraints of trade? A. You mean, am I against restraint in trade?

Q. Yes. A. I guess I am, although I am not very clear what restraint in trade is. Actually I am not in trade and I don't know much about it.

Q. But you are against monopolies? A. I am pretty sure of that, yes.

Q. Doctor, I call your attention to Plaintiff's Exhibit 682, which is the minutes of the Oregon State Medical Society monthly meeting of the Council for November 8, 1941.

"Voted to nominate Charles E. Sears and Stanley Lamb of Portland and W. W. Baum of Salem to serve on
1775 the Board of Trustees of the corporation now being organized by the Portland Council of Hospitals to administer a pre-payment plan of hospital service subject to the amendment of the articles of incorporation to provide specifically that the corporation shall not contract to furnish medical or surgical services and to the amendment of the by-laws to provide that the Oregon State Medical Society shall nominate the exact number of trustees to be elected to represent the medical profession and shall nominate any successors to be elected to fill subsequent vacancies among the trustees representing the medical profession, and subject to such other amendments to the articles of incorporation and by-laws as deemed advisable by the Society's legal counsel."

Do you regard that as being either monopolistic or in restraint of trade, Doctor? A. No. I hadn't those thoughts in mind as you were reading because I didn't know why you were reading it, didn't know you were still on that subject, but I can't see anything monopolistic or in restraint of trade on my being on this Board of Trustees on what later I think became the Northwest Hospital Association. No, I don't.

Q. Even though the statement was made that "the articles of incorporation are to provide specifically that the corporation shall not contract to furnish medical or surgi-
cal services"? A. Well, this was a corporation
1776 which was to be established to sell hospital service.

Q. And the articles of incorporation expressly provided at the request of the Oregon State Medical Society— A. Was it at the request of the Society?

Q. Well, I am reading from the minutes of the Council. A. I just thought that was in the by-laws. I didn't know it was at their request. Well, it is all right. It doesn't matter. No, I don't see that that is monopolistic at all.

Q. Now, this morning you said when OPS was in its formative stages you were of the opinion that there should be an amalgamation of the smaller local plans into one state plan. Now, is that not monopolistic? A. No.

Q. It isn't? A. That is not monopolistic, not in any way.

Q. Now, I am having a little trouble following your views of monopoly, Doctor, and I am even more confused because although at one point this morning you stated that

you were for a state organization, at another time you stated that you believed that the smaller the plan the better. Didn't you say that? A. That is right. There is no contradiction there. I said that I believed—within certain limits, of course. If a plan is too small you couldn't operate it—but in general smaller plans do better than larger ones.

I think I also said this morning and gave reasons
1777 why it seemed necessary to have a plan as large as a state plan. Now, it is sometimes necessary to do something that one might wish wasn't necessary to do, you see. At the same time I want to make it clear that my views don't remain the same year after year. That was formed in '41, and whereas at that time I would have welcomed the amalgamation of all these local plans into one state plan, I am now glad that they didn't do it. I think that we get along better with some of the local plans remaining outside. I think that the doctors in those areas like it better, and I think probably the thing operates a little better.

Now, five more years, I may have changed my opinion again a little bit. I don't know. But that is as near as I can express it.

Q. Now, Doctor, you also stated this morning that you interested and desirous of helping the average individual with respect to medical expenses and to apply the insurance principle to the practice of medicine, did you not? A. I did.

Q. How do you reconcile that, Doctor, with the statement you made in 1948, speaking at the annual banquet of the Eastern Oregon District Medical Society in which you—

Mr. Jaureguy: What is the exhibit number?

Mr. Marcus: This is not an exhibit. Do you want to have it marked?

1778 Mr. Jaureguy: No. But I object to your reading it.

Mr. Marcus: I am asking him how he reconciles a statement that appears—

Mr. Jaureguy: In the newspaper. There is no evidence he made the statement. This is not in evidence. I object to your reading it with the preface of "a statement he made."

Mr. Marcus: If the witness wants to deny having made the statement that is his privilege.

The Court: The way it is usually done is, "Didn't you at a certain time and place, so and so being then and there

present make the following statement? Answer yes or no."

Mr. Marcus: Well, I don't want to go through that process, your Honor.

Q. Did you make a speech in 1948 before the Eastern Oregon District Medical Society, Doctor? A. Yes.

Q. And was it reported in the newspapers? A. I don't know.

Mr. Marcus: May I have this marked.

(Newspaper clipping reporting address of Dr. W. W. Baum before Eastern Oregon District Medical Society, so offered, was thereupon marked for identification Plaintiff's Exhibit No. 2064.)

Mr. Marcus:

Q. Doctor, would you look at this article? A. 1779 Yes.

Q. Did you make the statements attributed to you there? A. I made the statements that are in quotes. I see one or two things where the reporter says "Dr. Baum expressed the opinion" so and so, that I don't think is exactly the way I phrased it, but it is a reasonably good report of my talk, yes.

Q. Now, Doctor, I read from the last paragraph of this article.

"Dr. Baum spoke briefly of the Oregon Physicians' Service, a plan begun in 1941. This insurance plan works now only because it is among small groups of doctors, he stated. Should it be put on a larger scale it would not work because people would try to take advantage by making office calls not usually necessary but made under the insurance plan because there would be no extra cost."

Now, is that your idea, Doctor, of promoting prepaid medical care plans for the average individual? A. That, as I say, is not—it is a very condensed version of what I was saying, and I did refer to Oregon Physicians' Service because I was giving a discussion of medical economics and the effort to apply the insurance principle to prepaid medicine plans.

Now, I believe I stated this morning, and I am sure others must have, that these plans, Oregon Physicians' Service and what we call hospital associations in Oregon, are not insurance plans at all. You cannot apply—well, you can apply the insurance principle to prepaid medi-

1780 cine, but it has never been done. They are only attempts to apply the insurance principle. What they really are is contract practice, and I in this speech was pointing out some of the difficulties inherent in that attempt, these attempts to apply the insurance principle to prepaid medical plans, some of the difficulties.

Certainly I make no statement that Oregon Physicians' Service is in any way the last word or even very perfect or very good. It is an effort to do something that we think, I think, is good. But it is not insurance, it is not an insurance company. It is contract practice.

Q. Now, Doctor, you also stated this morning that you were much concerned with a third party interfering, coming in between the doctor and patient relationship, and I understood you to say this morning that it was bad if the doctor worked in harmony with prepaid medical care organizations and it was bad if he didn't work in harmony with the prepaid medical care organization. Isn't it true, Doctor, that there is also a third party in the OPS set-up and in the set-up of your own local association? A. Yes, sure, that is true. There has to be. I just got through saying these are forms of contract practice, and when you have that you have the third party. The only thing that we doctors have been able to figure out so far is the best way to minimize that third party's bad influence, and that is to have the third party consist of a board
1781 or a group of physicians. First they are physicians, secondly they shall be elected by the participating physicians in the plan, and it would be still better if there were some practical way to have all the subscribers participate in that election too, but I haven't been able to figure out any way yet to do that. That would be still better.

The Court: What about the other features? Is OPS a profit-making corporation?

A. No, sir, that is not its purpose.

Mr. Marcus:

Q. I believe it was organized as a profit-making corporation, is that not so? A. That is correct. We spent many weary hours going over and over that, and to the best advice that we could get it was almost impossible, if not completely so, to organize such an organization in this state, and about all we could do was to abide by that same old hospital association law that I mentioned that these people had put through the legislature years ago. We had

to follow, or felt that we had to follow, their pattern, but I think we said in our articles of incorporation definitely that it was not the purpose of this corporation to make a profit, and it never would, and, of course, it never has.

Q. Well, Doctor, I suppose when you talk about the third party interfering in the doctor-patient relationship what you have in mind as the ideal form is the least interference between the attending physician and the
1782 patient, is that not so? A. That is right.

Q. Now, I call your attention, Doctor, to Exhibit 1183, which is a full coverage medical contract of the Physicians' & Surgeons' Hospital Association in 1941, and there is this provision:

"It is particulary agreed and understood that each and every member covered by this contract shall be entitled to unrestricted choice of available physicians from the Association's list of member physicians in the treatment of any illness or injury, excepting that the Association shall retain the right to direct the medical or surgical procedure in every case when in the opinion of the Association such direction is required for the welfare of the patient."

Now, do you consider that as a remote or direct interference in the patient-doctor relationship? A. It is remote if it is never exercised. It is direct when it is exercised. It is one of those things I have been talking about, the inescapable evils associated with contract practice.

Q. And that was the Association you joined up with in preference to dealing with the other hospital associations, isn't that so? A. I am—I didn't understand you, what you said, what association you read that from, something about Physicians' & Surgeons'—
1783 Q. That is Physicians' & Surgeons' Hospital Association contract. A. What is the Physicians' & Surgeons'—there was a Salem Physicians' & Surgeons' Hospital Association.

Q. That is the same. A. The Salem Physicians' & Surgeons' Hospital Association?

Q. Yes. A. Okeh.

Q. Now, Doctor, are you familiar with the Multnomah Medical Service Bureau? A. Well, in a way. I remember when it existed and I heard people discuss it and talk about it and so on, yes.

Q. And that was approved by the State Society, was it not? A. I think so. It was approved by the Multnomah

County Medical Society and disapproved and reapproved and so on. I remember that. And I couldn't tell you—I suppose the State Society approved it.

Q. Doctor, I am reading from Exhibit 207, which is Bulletin No. 35 of the Multnomah Medical Service Bureau, April 28, 1941.

"The Board of Directors invites attention to the matter of continued close cooperation in view of the increase in hospital rates and special nurse charges and again wishes to remind the staff that you are paying your patient's hospital bill; you pay for all special nurses; you pay for all drug bills; you pay for all ambulance bills; you are paid from what is left."

1784

Now, does that suggest to you an interference in the physician-patient relationship? A. No, not—

Q. It doesn't suggest anything to you, does it? A. Yes, yes it does.

Q. What does it suggest to you? A. Probably not—it doesn't suggest any thing to me along the line you are getting at. It just re-emphasizes the thing I have sweat blood over for so many years. If you are going to have these plans, if you are going to have them work—and by "work" I mean they must maintain their existence. They can't charge a subscriber too much money or he can't pay it. If you are going to come out everybody has got to cooperate to keep the cost down. The patients must cooperate and the doctors must cooperate. Now, it is easier to get at the doctor than it is the subscriber, so you have to keep everlastingly hammering at the doctor, "Don't waste the funds of the Association with unnecessary," we will say, "unnecessary hospitalization." All right. One way to dramatize that is to tell him it comes out of his pocket, which it does, because he owns the corporation. The corporation pays the hospital and other bills and the doctor gets what is left. So it brings it forcibly to his attention. Now, that is what that suggests to my mind.

1785

Q. Well, don't you think, Doctor, when the average physician gets a circular of this sort he can't help thinking this when he has to decide how long a patient should be in the hospital? This is one factor that enters into his judgement, does it not? A. You mean it might influence him to send his patient out of the hospital sooner than he should?

Q. Yes. A. I suppose it might. I suppose it might. I doubt if it would with any very good physician. Sure, it might.

Q. Now, Doctor, I suppose you are acquainted with the other individual defendants in this case. A. Yes.

Q. And I suppose you have worked with them on various committees in the Medical Society. A. Yes.

Q. And discussed various matters involving State Society policy and including contract practice of medicine? A. I am sure I have.

Q. Before I forget, Doctor, this morning we were talking about your being on a Board of Censors which expelled Drs. Steele and Johnson. Now, I have here Exhibit No. 4 which is the constitution and by-laws of the Oregon State Medical Society and it states here that:

"The Council shall be the Board of Censors of the
1786 Society. All questions of unethical nature brought before the House of Delegates or general meeting of the Society shall be referred to the Council without discussion. It shall here decide all questions of discipline of component societies, members of the society, and appeals from decision of component societies."

Does that refresh your recollection that the Council acts as the Board of Censors? A. Yes. When you asked me if I was on the Board of Censors it didn't register. I had forgotten, if I ever knew, that that was in there.

Mr. Marcus: That is all.

Mr. Jaureguy: Well, you had these documents you were going to question him about and the Judge postponed it until he could have a look at them. You are through with him then?

Mr. Marcus: Yes.

1787 Redirect Examination

By Mr. Jaureguy:

Q. This morning Mr. Marcus showed you this Exhibit 1949 and asked you to read it and then said he would ask you some questions. The Judge asked you to wait until you had an opportunity to look at it. Have you looked at it? A. Yes, I have read through it.

Q. That refreshes your memory that the Council affirmed the action o the county society in expelling these two members from the county society? A. That is right.

Q. You were present at that meeting? A. Yes, I was a member of the Council.

Q. The motion was made and seconded by whom? A. You mean—.

Q. Who made the motion? A. Dr. Blair Holcomb. Am I to read this?

Q. No. I just wanted to get the names. A. Dr. Blair Holcomb: "I move that the action be maintained (sustained); Dr. Sweeney: I second the motion," and then Dr. Sears was presiding and the motion was carried and spread upon the minutes.

Q. Do you feel, to use Counsel's expression, you were kicking somebody out of the Multnomah County Medical Society when you approved that? Were you kicking somebody out or just saying that the Multnomah County
1788 Medical Society had the right to kick them out? A. It was my understanding that we in the Council sat on this hearing—exactly what you would call it I don't know. The Multnomah County Society had taken this action and I suppose, by request of the doctors, it was referred to the State Medical Society and we, as the Council of the State Medical Society, were sitting more or less as a board of appeals; we looked over the evidence to see that the man or men had had a proper hearing and that the thing was in order and if, in our judgment, it was proper, we so voted. It was my understanding at that time the men had already been expelled. We were not voting on their expulsion.

Q. Dr. Sweeney seconded that motion? A. Yes.

Q. Do you know what his attitude was towards commercial hospital associations? A. Well, I talked to Dr. Sweeney personally and I heard him make—

Mr. Marcus: I object to that, your Honor, on the ground of hearsay.

The Court: The objection is overruled. We have got this Sweeney business in the record here in two or three ways.

Mr. Jaureguy: Yes.

The Court: He was subjected to proceedings him-
1789 self in Jackson County.

Mr. Jaureguy: He also made a nice address in 1937 that I am putting in evidence here,—I mean, if the Court will receive it.

Q. Counsel read form Exhibit 1183, one of the old Physicians' & Surgeons' contracts. I think it was in 1941.

In that there was a provision that the association retain the right to—I don't remember the language.

Mr. Marcus: "Direct."

Mr. Jaureguy:

Q. —to "direct"—

Mr. Marcus: Direct the procedure and treatment.

Mr. Jaureguy:

Q. —"to direct the procedure and treatment." I am taking Counsel's recollection for it and I am sure it must be right.

You made the statement whether or not that directly or remotely affected the relationship of doctor and patient depended upon whether it is exercised; if that control of the association is exercised, it does; if it is not exercised, it does not.

Could you tell us the extent to which the Physicians' & Surgeons' Association in practice tried to direct doctors in their medical and surgical procedure? A. I don't remember—as I told you, I was first on the Board of Directors and then I was on the supervisory committee, where those things would come up. I don't remember that it ever happened during the years that I served, and again I
1790 think we are getting into the same difficulty—I am reminded of these discussions, interminable ones, about the sponsorship of health insurance, voluntary health insurance and what we mean by it and so on.

I tried to say, I think, in my testimony this morning that interference between the doctor-patient relationship is very intangible, a very intangible thing. It may exist just as much when there is harmony as when there is disharmony between the physician and a third party. Again, it is not impressed on you particularly as interference in the doctor-patient relationship where it is rendered by this organization where it may be if it was rendered by, say, the National Hospital Association, the reason being that I have had no objection at any time during my treatment of a case to having that treatment brought before the supervisory committee in Salem, the reason being that those are brother practitioners of medicine whom I know who were elected, as I was, by the group there to serve, and I feel no more about that—it is just, you might say, a free consultation, whereas if

it is some other organization over which I have no control, remotely run or what not, I might feel it very keenly; so it is a very difficult matter to apply these words "interference with doctor-patient relationship" and say that is set up in this manner.

Q. Would you object to it if it is not in the con-
1791 tract at all but the interference is exercised by a third person? A. Depends on who the third person is.

Q. Suppose the National Hospital Association should write a contract where they would not retain any control of the doctor-patient relationship but, nevertheless, would endeavor to control it? A. Naturally, I don't like that. As a matter of fact, my judgment of the National Hospital Association or the Industrial Hospital Association or the Oregon Physicians' Service, or any other association, is based more upon what they actually do and how they do it than what or what might not be written in their contracts.

Q. Now, I want to refer to Exhibit 682. I don't know exactly where it is, Doctor, but Mr. Marcus read from some exhibit where you had disapproved some plan in a statement which you made with respect to the care of members of the Farm Security Administration, and then he also read in connection with another matter from Exhibit 682.

Exhibit 682, if you recall, consists of the minutes of the monthly meeting of the Council of November 8, 1941.

"President Baum outlined a proposed plan of prepaid medical care for standard 'borrowers' of the Farm Security Administration, which the committee of the Bureau of Medical Economics had discussed with representatives of the Farm Security Administration.

1792 "Upon motion duly made and seconded it was voted that this plan be approved and the committee authorized to modify it in such details as in its judgment were found necessary in further negotiations with the representatives of the Farm Security Administration."

Does that recall anything to your mind in connection with formulating a plan for the Farm Security Administration? A. Well, yes. I remember at the time the Farm Security Administration was in existence these people were—these borrowers were of course marginal individuals and they had little or no money. The local representatives of the Farm Security Administration did meet with the Council of the State Medical Society and com-

mittees from our Society. They approached us. Doctors had been supplying care for these rural people, part of it as a matter of charity, as the people could not pay, and the Farm Security Administration people came to us, and we had many meetings and spent considerable time in attempting to work out some kind of a program that would be practical. I can't remember the details, but a program finally was worked out, but, as to how long it worked or how well it worked, again I don't remember. Do you recall what date that was, again?

Q. This is November 8, 1941. A. Yes. Well, that was just about the time of Pearl Harbor; the war came on and, as I recall it, the Farm Security Administration just kind of—I don't know what happened to it—evaporated
1793 or something. But a plan was approved finally, yes. We worked one out that was all agreed to.

Mr. Jauregui: That will be all.

Recross Examination

By Mr. Marcus:

Q. You seem to have some memory of the Farm Security Administration business. I suppose your recollection includes the fact that the Society was not willing to allow the physicians duly licensed in Oregon generally to contact the Federal Security Administration or the Farm Security Administration for this purpose? A. I am sorry. I don't understand your question. What could not the physicians contact?

Q. Well, isn't it true that the plan, as finally worked out, was limited by the Oregon State Medical Society to doctors approved by members of the Society and the plan was limited geographically and in other respects? A. The Oregon State Medical Society worked out a plan with the Farm Security Administration officials, the details of which I frankly do not remember.

Q. You do not remember, then, Doctor, whether the Farm Security Administration came in and asked for one type of plan and the State Society said, "No," and finally required the Farm Security Administration to take another sort of plan? You don't remember that, do you?
1794 A. No, sir, because that is not what happened.

Q. Apparently, then, you do remember what happend? A. I am telling you I remember that we had

numerous meetings with these representatives of the Farm Security Administration, and I remember that there was much discussion, and to make a statement of what the State Society required the Farm Security Administration to do, that they required the Farm Security Administration to do something, just would be ridiculous. They would not stand still for anything like that.

Q. You would not dispute what is in the documentary records about it? Would you? A. Well, as nearly as I can recollect it, the plan that was finally arrived at was after discussion and agreement between the two, and it seems to me you are intimating that was dictatorial on the part of the State Medical Society.

Q. Well, that is a fair assumption. A. I don't think it was. We probably were asked about what we thought was best and right, of course, but I don't recall that we had any power to dictate to the Farm Security Administration.

Q. How much did you, yourself, have to do with the discussion entering into that arrangement? A. How much did I have to do with it?

Q. Yes. A. I was present and participated in
1795 a part of that. I don't remember how long.

Q. You were not on a committee designated for that purpose? A. I wasn't on a special committee; I don't believe I was.

Q. During what time were you a director of the Physicians' & Surgeons' Hospital Association at Salem? A. My recollection, from the time it was organized until I became President of the Oregon Physicians' Service in 1941, which would be ten or eleven years.

Q. Now, Doctor, I suppose it is true that out of all of the doctors who were in this association you were more friendly with some than you were with others? A. Are you speaking of the Salem Physicians' & Surgeons?

Q. Yes. A. To a limited degree only. I know all of them pretty well. It is a small town; it was even smaller then.

Q. I suppose there were those with whom you were more friendly than others, and vice versa? A. Oh, I suppose so.

Q. And you don't think it makes any difference for you to submit to the direction of doctors, who were more or less friendly than others, as to what you were supposed to do for the patient? A. This is not a question in theory. This is a practical thing.

Q. You have been discussing theories. A. In Sa-
1796 lem there isn't a single doctor in that association or a single doctor in Salem that I would not be perfectly happy to sit on any case.

Q. I suppose—

Mr. Jaureguy: Let him finish.

Mr. Marcus:

Q. I suppose every time you have a private patient you rush to find a group of doctors who will direct you as to what to do with the patient, is that so? A. One of the reasons—

Q. Is that so? I am asking you a specific question. A. I won't answer that Yes or No. I don't like the sound of it—every time I have a patient I rush to get some consultant. That is ridiculous. I don't rush to get a consultation with every patient.

Q. That is right. You don't rush to get directions from a group of physicians with every patient? A. Absolutely not. I welcome consultation when I feel I need it or want it.

Q. That is right, when you feel you need it or want it. A. Yes.

Mr. Marcus: That is all, Doctor.

1797 Redirect Examination

By Mr. Jaureguy:

Q. I am not sure I got the connotation of either the question or the answer. It was about the matter of amalgamation, the local plan, that you at one time favored—whether it was bad or good or monopolistic or in restraint of trade. Why did you think it would be in restraint of trade or monopolistic when you believed in it the way you did? Did you think it was all right? A. Well, I guess I am having difficulty in making myself clear. The purpose of a prepaid medical plan is for these doctors—all doctors—I would like to see all doctors participate and make their services available to these patients who also wish to participate in this plan. The ideal plan is where all doctors participate. That is a true open panel. Mr. Marcus would agree, I guess, that that is an open panel; so would I. You would not have any trouble there.

If all of these plans amalgamate and if all the doctors are in the plans, it is monopolistic only in the same sense that

the practice of medicine is monopolistic. The State licenses me and the other doctors to practice medicine, which I would say is not monopolistic at all, but a doctor can serve equally well one, or two or three or four plans. The only thing any medical society is interested in is that the prepaid medical plans which are established shall be, in so far as pos-
1798 sible, in the best interests of the public and the pastients and the physician. That is all they are interested in. Consequently, they are not going to approve plans that they feel are not in the best interests of the patient, the public and the doctor; so if you had two or three different plans functioning, I might service two or three different plans.

However, I can't see where there would be any earthly chance in having more than one of those plans operated by physicians. If the physicians in Salem form a plan, a prepaid medical plan, with an office here, and then go right across the street and form another prepaid medical plan with an office here, that would be silly; but if you want to come into Salem and establish a prepaid medical care plan and it is satisfactory to me, and I think your plan is good, then I may work with this group of physicians and I may work for that group over here, too.

Mr. Jaureguy: I think I get the idea now. I wasn't sure that I got it before. That will be all.

(Witness excused.)

Mr. Jaureguy: I hope everybody is through with Dr. Baum. He is leaving the jurisdiction of the Court tomorrow.

1779 Dr. Lyle B. Kingery was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Would you give us your name, please. A. Kingery, Lyle B.

Q. What is your business or profession? A. Practice of medicine.

Q. You have been practicing in Portland? A. Yes, since late '21 or early '22.

Q. What medical school did you attend? A. I graduated from the University of Michigan.

Q. Then did you have some internship or postgraduate work there? A. I stayed on there until I came to Portland.

Q. How long a period was that? A. It was a little over five years, almost six.

Q. You have been in Portland ever since? A. Yes.

Q. Are you a general practitioner or do you have a specialty? A. My work is limited to dermatology, diseases of the skin.

Q. Have you had that specialty since you have been in Portland? A. I have never practiced anything else.

1800 Q. Have you ever treated patients of commercial hospital associations?

Mr. Marcus : Your Honor, I would like to make the same objection as I made with respect to the testimony of Dr. Durno as to this line of testimony.

The Court: The same ruling. It is admitted, subject to the objection.

Mr. Jaureguy:

Q. The Judge overruled the objection, so you can tell us whether you have treated patients of commercial hospital associations. A. I think I have treated patients for them, for each of them.

Q. How many years back does that go? A. I can't tell you the definite date, but since very soon after I came here.

Q. Did you at one time have a meeting with the Board of Censors or other committee of the Multnomah Bar Association in which the matter of these hospital associations was discussed? A. Not the Bar Association.

Q. I mean the Multnomah County Medical Society. A. Yes, I did.

Q. As a result of that meeting did you cease treating patients of commercial hospital associations? A. To be quite honest, I have a very vague memory of that meeting. I remember going to it. I remember in a very vague way more or less the nature of the discussion. I can't tell you

1801 definitely—there may have been a time; so far as I remember, I didn't cease seeing patients; there may have been a time. I can't tell you whether it was a few months or a year or what—and I am not sure that it did occur—during which I believe—I remember this—I continued to see patients and bills were sent to them personally or some such arrangement as that.

Q. You say that was possibly for a period of a year or so? A. I don't think it was a year, if at all. I may be wrong. I asked Miss Alexander about it in the office and she didn't think it occured. I think it was a matter of months, if at all.

Q. Then, since then have you been taking tickets of hospital associations? A. I have and, if I may, I would like to add this:—

Q. Surely. A. —which describes my particular position: I have said I was a dermatologist, which is a rather restricted part of medicine. I have always acted in the role of consultant, exactly as I do with each of the railroads. I see relatively few of these patients in toto.

At the time of that meeting I can't tell you absolutely. My impression is that they constitute one and a half per cent, our total business; it was at least below five per cent.

I considered myself, as I said, in the capacity of seeing only the very unusual and not very frequent cases, and acting in the capacity as a consultant for those special cases sent to me exactly as they were sent by the railroads.

1802

Q. You have continued that practice up to the present time? A. I have.

Q. Aside from that meeting of the Board of Censors, was there anything that could be considered the action of any medical society? A. I remember of no such episode.

Q. Are you a member of the Multnomah County Medical Society? A. The County, and the Academy, and State and National.

Q. You say "Academy"? A. Academy of Medicine in Portland.

Q. Are you one of the professors at the University of Oregon Medical School? A. I am.

Q. During this time, aside from this one meeting that you have testified about, have any of the societies ever tried to induce you not to follow that practice? A. Not to my memory.

Q. Do you have office associations with other doctors? A. Two others.

Q. What are their names? A. Dr. Dahl and Dr. Ilge.

Q. Do they likewise take patients from commercial hospital associations? A. As far as I know.

1803

Q. Has any medical society, as far as you know, complained about it? A. I think Dr. Dahl has had no experience and I think Dr. Ilge received the same type of letter I did at about the same time.

Q. About the same time? A. Yes.

Q. Are you a member of the Portland Academy of Medicine? A. Yes.

Q. Are you an officer? A. I am a past president.

Mr. Jaureguy: Take the witness.

Mr. Marcus: Your Honor, I wonder if we might have the recess now so I could have some time to look at these documents?

The Court: Yes.

(Recess)

1804 Cross Examination

By Mr. Marcus:

Q. Doctor, on direct examination you stated that you had been accepting the tickets of these various hospital associations. You also stated that there was an occasion, which was rather hazy in your mind, of your being called before the local Board of Censors, and then you were uncertain in your mind of whether you actually quit taking tickets or not. I have here Plaintiff's Exhibit 1920, and rather than to inflict this document on you, Doctor, I am just going to read from a few paragraphs to see whether that refreshes your recollection. This is a transcript of a hearing before the Board of Censors of the Multnomah County Medical Society, November 15, 1937. Dr. Adams asked you this: "Do you render any service to any subscribers of the National Hospital Association?" and you said you did.

"Dr. Adams: The Society, you are aware, passed a resolution against such action and directing that the respective committees proceed forthwith to bring the matter before the Board of Censors, so we so do in this particular case of yours. The basis of the complaint is the code of ethics of the American Medical Association which frowns upon solicitation of patients either directly or indirectly."

Then, Doctor, you made this statement with respect
1805 to the hospital associations:

"There is no set charge for X-ray treatment. I call them up and tell them how much it will be. In other words, I have a fairly clear conscience about the whole thing. I have conscientiously not treated these cases any different than I have cases you might send me or somebody else might

send me. That is that. I don't know, Dick, how accurate your information and all these complaints may or may not be and, very frankly, I have no idea how much work I was doing for them. When I received this notice and after I went up and listened to you and Frank the other night I had the girl go over our books for the first nine months of this year, January 1st to September 30th, anyway the first nine months, and I was a little surprised, to be quite frank, to find that it is just a shade, some hundredths, over 2 per cent of our work."

Then, "Dr. Adams: It denies another man who does not see fit or is not permitted to associate himself from a real or sporting chance of establishing himself in the practice. It permits a lay-controlled organization to gain a greater foothold and a greater and greater power in a community. It is one of those abstract things on which these complaints are based."

The Court: What are you reading all that for? It
1806 is all in evidence.

Mr. Marcus: Well, your Honor, he stated he was uncertain as to why he was called and what happened and whether he was instructed to cease dealing with these hospital associations. If he is prepared at this time to say that they did tell him to cease dealing with the hospital associations I won't read any further.

The Court: Why didn't you show that to him at intermission?

Mr. Marcus: Well, your Honor, I was reading this myself.

The Court: Let him go off the stand and read it and let's get off that.

Mr. Marcus:

Q. Perhaps I can ask him that question on the basis of what I have read so far.

Q. Do you recall— A. Honestly and frankly my impression, whatever it is, nine or ten years later, was somewhat as this, and I will be as exact as I can, sir.

Q. Well, if you don't recall, you can read this. A. That they pointed out points much as you have said, and I told them that I was just as interested in what was the best for medicine in this community as were they—

Q. Well, Doctor, I will have to ask you to read this or I will have to ask the Court's permission to read it.

The Court: Go down there and read it, Doctor Kingery.

A. Thank you.

1807 (Witness temporarily excused.)

Mr. Jaureguy: Dr. Fitzgibbon.

I want to say to the Court and Counsel that Dr. Fitzgibbon has some engagements next week, and I know we will not possibly finish his testimony today, and then some day next week—

The Court: Well, it has dragged so today I am going to run to 4:30 tonight anyway. We will settle that then.

Dr. John H. Fitzgibbon was thereupon produced as a witness in behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Will you give us your name, please? A. John H. Fitzgibbon.

Q. Where do you live? A. In Clackamas County, just outside Portland.

Q. What is your business or profession? A. Physician.

Q. What was your formal education as a physician? A. Graduate of the University of Oregon, Bachelor of Arts, and M. D. from Rush Medical College.

Q. And did you have an internship? A. In Chi-
1808 cago, yes.

Q. And you have been practicing in Portland how long? A. Since January, 1922.

Q. Continuously? A. Yes.

Q. What is the type of your practice? A. My work is limited to digestive diseases.

Q. And has that been true for some time? A. Since I started practice here.

Q. Now, are you a member of any medical societies? A. Several, yes.

Q. Which societies are you a member of? A. Multnomah County—do you want all of them?

Q. Yes. A. Multnomah County, the County Society, Portland Academy of Medicine, Oregon State, North Pacific Society of Internal Medicine, Pacific Interurban, American

College of Physicians, American Gastro-enterological Association, American Gastro-scopic Society, International Society of Gastro-enterology, Japan Medical Association, and World Medical Association.

Q. And have you ever been an officer of the American Medical Association? A. I have been a trustee since 1945.

Q. And were you ever a member or delegate from Oregon? A. I was a delegate from 1936. I was elected in the fall of '35 and served eight years until I became a
1809 member of the Council of Medical Service, at which time I was still delegate but my alternate served for me for two years.

Q. Now, we would like to get from you the relationship, if any, between the American Medical Association and the Oregon State Medical Society with particular reference to the control, if any, which the American Medical Association has over the Oregon State Medical Society and the County Medical Society. A. Well, in the structure of the medical organization in this country we have what you might describe as a federacy and work from the bottom up. The county societies compose the State societies and then the State societies are federated into the American Medical Association.

Mr. Marcus: Your Honor, I don't want to make an objection on this stuff, but we have stipulated, we have a pretrial stipulation which goes into this relationship.

The Court: Go ahead.

Mr. Jaureguy:

Q. Go ahead, Doctor. A. The organization works from the bottom up. The county societies elect delegates to the State societies. The houses of delegates of the State societies then elect delegates to the American Medical Association, and the house of delegates of the American Medical Association is the policy making body of the Association. So that it really works from the bottom to the top rather than from the top down.

Q. And could you tell us—now, you have attended
1810 meetings of the Council of the State Medical Society?
A. Oregon State, yes.

Q. And that was over a period of years that you attended those meetings? A. Well, I was a member of the Council for a number of years. I have forgotten just how long except in—I think I finished a term as Councilor or some office

in '34 and was out of the picture until the fall of '35 when I was elected delegate, and we have a rule in this state that the Delegate—we had one delegate, and then we have one now that the delegate to the American Medical Association is automatically a member of the Council of the State society. We also have a rule that any officers of the American Medical Association is also automatically a member of the Council of the State Society, so that from the fall of 1935 until the present I have been a member of the Council in that respect.

Q. And to what extent has the State Medical Society felt bound by any ruling of the American Medical Association, or to what extent has the American Medical Association tried to direct the policies of the State Medical Society?

Mr. Marcus: I object, your Honor. The witness is in no position to state how the State Society felt itself to be bound, nor is he in a position to tell how the American Medical Association directed what the Oregon State Medical Society should do.

1811 The Court: I will rule in a moment.

Dr. Kingery, stand right over here and maybe we can let you go in a few moments. Now you ask him any further questions.

(Witness Dr. Fitzgibbon temporarily excused.)

Dr. Lyle B. Kingery, a witness on behalf of Defendants, resumed the stand and testified further as follows:

Cross Examination

By Mr. Marcus:

Q. Have you read this transcript, Doctor Kingery? Does this refresh your recollection that the Board of Censors desired you to withdraw from dealing with Hospital Association? A. Asked me to stop taking slips.

Q. And you wrote to the National Hospital Association and to the Industrial Hospital Association; did you not, that because the Board of Censors had informed you that a continuation of your consultant services would result in your expulsion you were ceasing— A. I may have. If I haven't forgotten—it is quite all right if you have the letter there.

Q. Will you just look at these two? A. That is fine.

Q. And it is your recollection, is it not, Doctor, that for some time thereafter you did not— A. That is what

1812 I said.

Q. And then you state that there came a period

when you began to accept tickets? A. That is right, that is right.

Q. And am I right in assuming— A. Pardon me. But during the time I was not accepting slips I believe I saw the patients. What did I say in my letter? I think that is true.

Q. I am not intimating that you didn't, Doctor. By virtue of the type of specialty you are engaged in, Doctor, it is still true, I suppose, that not a very large percentage of your work involves these hospital associations? A. Extremely small.

Q. When you began to take these tickets again, Doctor, you didn't go to the Medical Society and tell them that, did you? A. Not that I remember of, no.

Mr. Marcus: That is all.

Mr. Jaureguy: That is all.

(Witness excused.)

1813 Dr. John H. Fitzgibbon, a witness on behalf of Defendants, resumed the stand and testified further as follows:

Direct Examination

By Mr. Jaureguy:

The Court: Now, Dr. Fitzgibbon, as to your objection, Mr. Marcus, Dr. Fitzgibbon can testify to things he knows about. That is the understanding.

A. I think the question had to do with limitations placed upon the State Society by the National organization, is that it?

Mr. Jaureguy:

Q. If any. A. Well, I think the limitations are put upon themselves by the local State societies, because many of them, if not all—I don't know how many of them do this—but I believe in our constitution and by-laws it states that the code of ethics of the American Medical Association shall be binding upon the members of our State society. Now, as far as I know that is the only expression. At least I can't recall anything else.

Q. That was a rule placed upon the State Medical Society by the State Medical Society? A. By itself, yes.

Q. But, is there any control, has there been any control

attempted to be exercised by the American Medical Association? A. Has there been or can there be?

Q. Has there been? A. No.

1814 Q. And in your years on the Council of the State Medical Society has the State Medical Society felt in any way bound except by what they themselves limited upon themselves by any rules by the American Medical Association?

Mr. Marcus: Again I would like to remind the witness that he is supposed to confine the answers to such questions to what he knows.

A. Well, now, I think in regard to—as you are asking that question—I began to get the idea of where contract practice fitted in here

Mr. Jaureguy:

Q. Yes. A. Down through the years, tying in with the code of ethics, certain rules have been promulgated by the house of delegates in regard to contract practice. For instance, in 1934, I believe it was at the Cleveland meeting of the house of delegates of the American Medical Association, the house of delegates formulated ten rules which should be used as a guide in contract practice. Now, of course, from time to time the house of delegates can modify or add to or change any of these rulings.

Q. Well, now, to get down to more specific instances, we have had, the evidence here shows, doctor-sponsored prepaid medical care plans in Oregon for many years. The Physicians' & Surgeons' Association in Salem, since 1929 or '30. Did the American Medical Association ever approve—I mean at that time did the American Medical Association approve of prepaid medical plans even though spon-

1815 sored by doctors? A. Yes, they have, but they have urged that they live up to certain specified requirements before receiving approval. Now, this whole thing has been in a state of flux down through the years, and as the thing has developed from time to time there have been various elaborations. It would take quite a little job of reading to go back through the minutes of the house of delegates, and so on, and ferret these things out, but when the Council of Medical Service was set up in—I think it was about 1943.

Q. '43? A. I think it was '43. —one of the functions of the Council of Medical Service was to study the various prepaid plans of all kinds. That doesn't mean society-spon-

sored necessarily, but the whole field of prepaid medicine, with the idea of assisting, gathering first information, and then assisting in various groups of one kind and another that would be interested in developing these plans.

Q. Well, now, that was in '43? A. '43, yes.

Q. About. But in 1930 we were having prepaid medical care plans in Oregon. At that time the American Medical Association didn't approve of any type of prepaid medical plans? A. We had no mechanism for approving at that time. You see, it wasn't until the Council of Medical
1816 Service was set up that there was any mechanism for establishing requirements for approval.

Q. Well, now, the American Medical Association has employees? A. They have about 800, over 800.

Q. Are those employees under a system of prepaid medical care? A. Yes. They have been for a few years. I can't tell you just exactly how long, but it is a recent development.

Q. Well, will you tell us what types of plans they have had?

Mr. Marcus: Well, your Honor, I want to object sincerely just because it is a waste of time.

The Court: How could anything be a waste of time on this subject with the scope of this case you have brought, Mr. Marcus?

Mr. Marcus: Your Honor, this case does not involve any type of prepaid medical plan that the employees of American Medical Association may have.

The Court: Maybe Mr. Jaureguy has some views about that. What do you think that has to do with this case?

Mr. Jaureguy: Well, while we think the evidence shows the State Society has acted absolutely independently of the American Medical Association, nevertheless—and is not in any way controlled, counsels' contentions to the contrary, notwithstanding we can go further and show that the American Medical Association itself permitted its employees, approved of its employees, having a type of medical plan which was a commercial hospital association.

1817 The Court: What issue does that bear on?

Mr. Jaureguy: Well, it is hard to put your finger right on the particular issue, but it is on the issue that the American Medical Association is not as opposed to commercial plans properly operated as counsel is contending they are.

The Court: Well, what relationship does he charge the

American Medical Association has to these activities that he is attacking?

Mr. Jaureguy: I am not positive that in the complaint itself he mentions the American Medical Association. I am not positive of that. I just have a faint recollection that he might, but I can't tell your Honor definitely that he does.

The Court: Do you, Mr. Marcus?

Mr. Marcus: I don't recall whether we mentioned it in the complaint. If we do it is merely as being a constituent association, your Honor. You see, the trouble with this type of testimony, your Honor, is this: I happen to know quite a bit about the AMA and the AMA setup. I don't want to get involved in a discussion with this witness about the type of prepaid medical care plan they have had with their employees because it has nothing to do with this case.

The Court: Don't evade the question. My question is, what relationship do you charge the American Medical Association has with the acts of these defendants that you are complaining of.

1818 Mr. Marcus: This: that the Oregon Medical Society has been guided by the principles of ethics of the AMA and by the policies expressed by AMA during this period.

The Court: You may continue, Mr. Jaureguy.

Mr. Jaureguy:

Q. Will you tell us about the procedure by which these employees came under prepaid medical care? A. Well, naturally, during all these years of discussion about prepaid medical care we became interested in having some protection for our own employees, so the Board of Trustees appointed a committee of employees to survey the situation, to interview the employees and find out first of all whether they wanted such protection, and, second, what type they wanted. Well, we discovered they were interested and would like to have some form of insurance, and so then we had them obtain from the various insuring groups an outline of the plans that were offered and the expense involved, and so on, and this committee then went over the various plans and boiled them down so they could make them easily understood by the employees, and again obtained the opinions of the employees and opinion of the committee and brought in two or three plans which they laid before us and asked which we favored, and we said, well, "Which do you favor?", and let them pick the one that they thought offered them the

most for their money, and it was an insurance company plan. I have forgotten which company. So, they were covered by that plan for a year. And then some of the
1819 enthusiasts in the house of delegates who felt that they should be covered by either the Cook County Society plan or Chicago Medical Society, or the Illinois State plan, and they started a bit of discussion and argument about that, and so once more we turned the committee loose to make another survey and bring in the findings, which they did, and once more we said, "Now, which plan do you prefer?", and this time they chose the one that was sponsored by the Illinois State Medical Society, which is also an insurance company operated plan, and that is what they are covered by now.

Q. Now, have you had occasion during your practice to give any study to the matter of doctor-sponsored prepaid medical care plans? A. Yes, I have. I have had to, particularly during a couple of years that I was on the Council of Medical Service of the AMA, and of course here in Oregon when the Multnomah Industrial Health Association was organized—that plan was laid before me as an opportunity to offer the low-wage earner medical care at a price he could afford to pay, and I joined that with certain stipulations; first, that they secure the approval of the County Society and live up to whatever restrictions the County Society might place upon them. The question, of course, arose in my mind at the time as to whether this thing was going to be simply another so-called hospital association, another contract practice setup. There was some discussion at
1820 the time as to its value in combatting the trend toward socialism in the country, whether or not it might be of value in heading off the drift toward socialized medicine. I rather doubted that. I thought it might even hasten it. But on the basis of giving more adequate distribution of medical care to the people in the low-wage group I joined it.

After some time—I have forgotten just how long—but it was before I ever saw a patient for the organization—it appeared to me that they were exceeding the limitations which the County Society Council had placed upon them in the way of solicitation and other things that I considered unethical, and having been a member of the Council which granted that approval I felt that it was necessary for me to withdraw from Multnomah Health Association, so I did so.

Q. And then did you ever go back to the Multnomah Health Association? A. No, I never did.

Q. Then, when the OPS was organized did you become one of the cooperating physicians of the OPS? A. Not at first. After the war was on and we had our problems here in regard to the increase of population—it happened at that time that I was Chairman of a so-called—I have forgotten the exact title—War Emergency Health Committee—Community Health Committee—it made a study of the health needs of the area here based on the needs of the in-
1821 crease of population and needs of the industry and I felt that inasmuch as the Oregon Physicians' Service had taken on the job of taking care of these shipyard employees that it was more or less a patriotic duty to sign up and help out and do my part, so I did. I have forgotten what year that was. I think it was about '42.

1822 Q. Since that time have you been a cooperating physician of OPS? A. I have, but I have had to place certain restrictions upon it. Due to the war experience I found it was necessary that patients that I saw should be filtered; that in my particular specialty it was not possible to accept everyone who elected to come in and have an extensive examination on his own say-so; that I felt the function of a consultant could be best served by myself by having those that did come to me from physicians who had gone over them and determined their need for the type of work that we do. So, that is the present status. We act as consultants with patients that are referred by other physicians, or in case a patient feels he wants to come directly he has, I suppose, the right to go to an organization itself and discuss it with them.

Q. That is the extent to which you treat patients under OPS? A. As a consultant, yes.

Q. Well, if an OPS patient came directly to you and said he wanted this examination, what would be wrong with your taking him direct? A. Well, actuarially that thing just cannot work because we are doing specialized work, and I feel that a patient's need for that sort of thing should be determined by his family physician who, if he feels the patient needs this procedure, would send him in with a
1823 requisition.

Q. The examination you give is something different than the examination a patient gets on going to a family physician? A. It happens in the field of digestive diseases you are dealing with a rather complex set of organs, all of which are invisible and many of which cannot be felt. Searching for disease in the digestive tract involves consid-

erable laboratory work and X-ray work, as well as observation and time, all of which is quite expensive and time-consuming.

Q. Have you ever treated patients for commercial hospital associations? A. I have not.

Mr. Marcus: I will make the same objection, your Honor, with respect to this testimony as in the case of Dr. Durno.

The Court: The same ruling. The testimony is admitted subject to the objection.

Mr. Jaureguy:

Q. Do you ever have patients come to your office for treatment who are members of any commercial hospital association? A. Quite frequently. We have always had them. In the old days it was generally recognized that that type of practice was a thing that I did not indulge in, and it was generally recognized that I did not accept those patients except as private patients, without any relation on my part to the contracting organization, and people came in without any expectation of getting involved.

However, as the years went by, I began to discover
1824 that I was being framed in a way—

Mr. Marcus: I object to that, your Honor.

The Court: Objection overruled.

A. That patients were being sent to me and being advised—

Mr. Marcus: I am renewing the objection, your Honor. How does he know?

The Court: And I am renewing the ruling. Have your seat.

A. Patients told me they were sent to me and were advised, when sent to me, to say nothing about it and to come in as private patients, and then have an examination or whatever work was necessary and after finishing that examination or whatever work was necessary, to ask for a report, and then to collect or to ask for reimbursement, so that in recent years that seems to be the trend.

By Mr. Jaureguy:

Q. After the examination, then, they ask for a report? A. Some of them wait until after the examination and then suddenly spring this on us. As to others, we obtain the in-

formation by asking them,—after this has reached the point where this had happened so often, I instructed my secretary or whatever girl sees the patient on admission to ask the patient what type of insurance protection they had, if any, so if they had any ordinary type of insurance they would know they were welcome, and those coming from the Industrial Hospital Association or other associations could be told
1825 that we were not associated with those associations, that we received our patients only as private patients and on their own responsibility, so that is the way I am doing it today.

Q. Well, you do not refuse to take care of the patients, do you? A. Oh, no. If they want to come in as private patients, that is fine.

Q. Then you give them an itemized statement so that they can go— A. They usually ask for it, and whatever is done is given to the patient. If it is a report, the report is addressed to the patient, and there is a reason for that.

Q. What is the reason for that? A. During this period when this heat was developing, I felt that I was being framed from that angle and attempts being made to get me to send in reports and have my signature on them; also checks were sent to the patients—first, they were sent to us and returned; second, they have been sent to the patient and by the patient endorsed and sent to us. The object, I was told by those who had seen other men's names displayed as endorsements and on checks, was to get my name on a check or letter.

Mr. Marcus: I would like to object to that question, your Honor.

The Court: The objection is overruled.

A. (Continuing) with the idea of proving that I was
1826 cooperating with these organizations, when I was not really—when I really was not.

Mr. Jaureguy:

Q. Was that the medical society's restraint, restraining you? A. No, myself. I never had any other intention or, rather, I never had any intention of handling the situation any other way.

Q. So you do not take tickets or take checks, for those reasons? A. I don't know what the tickets are. I haven't seen any. I do not accept the checks, or at least I do not knowingly.

Q. You do not send bills to the commercial hospital associations? A. I do not.

Q. I wonder if you could give us the reason why you prefer not to send your bills to the commercial hospital associations or accept their checks? A. It has been from the first. This contract practice, to begin with, when I entered the practice of medicine, was more or less of a mess. There was considerable unethical conduct in connection with it, solicitation and all sorts of things, and I decided I didn't want to have anything to do with it. I couldn't see where these four or five or six organizations around here were doing an ethical job or behaving in a professional manner, and I could see many harmful aspects of the thing.

I could see where my private patients were paying
1827 the hospital expense of these contracting groups, who were getting low rates in the hospitals at the expense of my private patients.

I could see lay stockholders making a profit out of the care of my patients.

Mr. Marcus: I move to strike out the last few statements, your Honor, made by the doctor, particularly what he said about hospitals giving lower rates to hospital associations, to hospital association patients. That must be pure hearsay, your Honor. I move that it be stricken.

The Court: Motion denied.

Mr. Jaureguy:

Q. What about your statement, the statement you made about some of the hospitals giving cheaper rates to the hospital associations? A. I think it was generally known in the community that the contracting groups received lower hospital rates than the private individuals and those of us engaged in private practice were actually financing these things. It was against my principles to have a third party, a layman, act as an intermediary between me and my patients and to make a profit out of it, and I felt whatever is paid for medical care should go to the care of the patient.

Mr. Jaureguy:

Q. Was it against your principles to have a lay individual intervene even if he did not make a profit
1828 out of it? A. Yes.

Q. In either event? A. Yes.

Q. In other words, those are two things you objected to? A. Yes.

Q. I am not sure I got the reason for your not wanting to have your name on the checks. Was that because they would say you were on their panel? A. Yes. The word went around this town that some of the men were being talked about,—how many, I don't know,—who participated in these plans and who didn't; but I heard, for example, that Mr. Bechtold had displayed checks with an endorsement on them from various physicians around town and had used that as an argument for getting other men to accept his plan.

Mr. Marcus: I move to strike out that remark on the ground of hearsay.

The Court: Motion denied.

Mr. Jaureguy:

Q. Do you recall a meeting about 1936 at which were present Drs. Sears, Lamb, Banner Brooke, Gambee, E. E. Gambee, and Dr. Chester Moore? I think it was in Dr. Sears' office. A. I don't know.

Q. This may help to refresh your memory. The testimony is that a political clique was organized at that 1829 meeting. A. 1936?

Q. Yes.

The Court: The meeting was at night, wasn't it?

Mr. Jaureguy: I am pretty sure it was.

A. Do you know what went on at the meeting, what was discussed, what was the object of it?

Q. No, I don't know what the object of the meeting was. Well, I will ask you this: Maybe this will lead up to it. Were you ever associated with Dr. Sears, Dr. Lamb, Dr. Brooke, Dr. Gambee and Dr. Martzloff in any political clique to control the Multnomah County Medical Society? A. Why, no. What form of control would there be?

Q. Among other things, to elect themselves as president, as President of the Multnomah County Medical Society. A. I have never been president of any society.

Q. Were these doctors, Dr. Sears, Dr. Lamb, yourself, Dr. Brooke, Dr. Gambee, and Dr. Martzloff, following 1936, successively the Presidents of the Multnomah County Medical Society? A. Brooke was president and Dr. Gambee—You mean E. E. Gambee?

Q. Yes. A. E. E. Gambee was president three or four

years ago, I think. Sears I think has never been president. I don't believe Martzloff has. Martzloff was President of the State Society and Sears was. I have forgotten the years.

Q. You have never been President of the County
1830 Society? A. No.

Q. How about Dr. Lamb? A. Lamb was President of the Society, but I have forgotten—president of some society but I have forgotten which one it was, in fact.

Q. Did you ever associate with—I won't say "conspired." Did you ever consult with these groups over a period of years to try to control who would be the officers of the Multnomah County Medical Society? A. No.

Q. Either during the period following 1936 or any other time? A. No.

Q. Or did you ever work together with any of these doctors or any other doctors to try to control who would be the officers of the State Medical Society? A. No, except I would say that the way these elections are held in our State Society, a nominating committee is appointed and the job of that committee is to go around and talk to all the delegates present at the meeting and get suggestions from them as to what men should be considered for the various offices.

Mr. Marcus: I object to that and move that this testimony be stricken unless the witness was on the nominating committee himself.

The Court: Motion denied.

A. I have never been on the nominating committee.

Mr. Jaureguy:

Q. But at any rate, you have never got together
1831 with a group of doctors to form a political clique or to try to control, try to get control of things as to who should be the officers of either Society? A. No. As I recall, there was a great desire on the part of the men in the Society to interest other men, and to get more young men to serve on committees and to hold offices and that sort of thing.

Q. Then, Doctor, there has been some testimony here that after this clique had been going for several years—this testimony was by Dr. Moore—that the members of the clique then took in other men like Dr. Shea and men of that type, who were of the better type. Does that revive anything in your mind? A. Bill Shea was President of

the County Society sometime within the last five years or so. I don't recollect just when.

Q. But he never was a member of some clique that you were a member of to try to control the thing? A. No. As a matter of fact, I have not been active in the County Society since 1934. I have been a member, but I have not held any office—I think it was 1934 I finished.

Q. In 1935 and 1936 Dr. Watts was President of the State Society? A. The State Society, yes.

Q. Do you know whether he accepted tickets from National or Industrial hospital associations? A. Yes,
1832 he told me that he did.

Mr. Marcus: Your Honor, for the sake of the record I will make the same objection on the ground of hearsay.

The Court: He is dead. He is dead, isn't he?

A. Yes, he died, I think, while he was president.

Mr. Jaureguy:

Q. Do you remember during that time, between 1936 and 1940, there were certain proceedings by the Grievance Committee and the Board of Censors in the Multnomah County Medical Society as a result of which some doctors were expelled from the Society and others resigned, on account of working for commercial hospital associations. A. I remember that, yes.

Q. You were on the Council, I think, of the State Society at that time? A. The State Society.

Q. Do you know whether there was any disturbance, whether the members of the Grievance Committee were disturbed on account of the fact that members of the Council of the State Society—on account of the attitude of the Council of the State Society towards commercial hospital associations? A. I do remember some letter or something that the Grievance Committee wrote. I am pretty hazy on it. It is too far back.

Q. Do you know whether there were members of the Council of the State Society at that time who themselves were friendly to the commercial hospital associations and were cooperating with them? A. Well, what year
1833 was that?

Q. That was from 1936 to 1940. A. Who was president then, do you know?

Q. Watts, Sweeney—I don't remember who followed

Sweeney. A. There was some discussion about Dr. Sweeney.

Q. While he was president? A. Yes.

Q. I don't know whether it would refresh your memory if I showed you this resolution. Showing you Defendants' Exhibit 2754, Minutes of the Meeting of the Council of the Multnomah County Medical Society, at which you were present, and Exhibit 2755, Minutes of the Meeting of the Council of the State Medical Society, on the next day, December 11th, at which you were present— A. Was I a member of the County Council that late?

Q. You were present, according to the minutes. A. I thought I was all through with that in 1934.

Q. You are listed here as "also present." A. Yes, among the "alsos."

The Court: You can pick it out without taking the time to read it all through.

A. Yes.

Mr. Jaureguy:

Q. The resolution is at the end of each of those minutes.

A. I don't remember.

1834 Q. You do not have any recollection of this resolution? A. No, I don't remember.

Q. As I recall, you do have a recollection of the fact that the members of the Multnomah County Grievance Committee were much disturbed by the fact that they were not getting the cooperation that they thought they ought to have from the State Council? A. There was something— I don't even recall who was on the Council.

Q. You are one of the defendants in this case, Doctor? A. Yes.

Q. Have you ever conspired with others to coerce doctors into not accepting tickets from hospital associations? A. Never.

Mr. Marcus: Objected to, your Honor, on the ground that is one of the issues in this case to be determined.

The Court: Objection overruled.

Mr. Jaureguy:

Q. Have you ever attempted, either individually or in concert with others, to coerce hospitals not to permit doctors on their staffs on account of their connection with hospital associations? A. No.

Q. Or to keep patients out of hospitals because of their being members of hospital associations? A. No, sir.

1835 Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Marcus:

Q. Doctor, I gather you are not quite certain as to when you ceased to be active in the Multnomah County Medical Society? A. I think it must have been 1934 because I can recall the end of 1934 when my term was up I dropped out of the picture and intended to stay out, and in the fall of 1935, when the heat was put on me at Gearhart and I was nominated for the delegate's job to AMA.

Q. I show you Exhibit 205 and ask you to look at the top portion and see if that refreshes your recollection? A. Apparently I was on a committee. It was not a very active committee, apparently.

Q. What is the date of that? A. 1936.

Q. Apparently in 1936 you were a member— A. I was a member of a committee, yes. I thought you were referring to holding office.

Q. Have you ever been President of the Multnomah County Medical Society? A. No, I have not. I have never held any office in the County Society except the Councilor's.

Q. You have been either a delegate to the AMA or

1836 Trustee of the American Medical Association since 1936, have you not? A. Yes, except for two years that I didn't serve; when I joined the Council of Medical Service.

Q. The Council of Medical Service is a bureau or organization of the American Medical Society? A. Yes, created by the House of Delegates.

Q. This is a volume here put out by that Council. A. I don't know what it is.

Q. This is Plaintiff's Exhibit No. 3. A. That is what it says, 1947. I was not on the Council then.

Q. Are you familiar with that pamphlet? A. Oh, I don't know. I suppose at some time I may have skimmed through it; I don't know. I was on the Council from the beginning of the Council, whenever that was, until the annual meeting of 1945.

Q. Now, Doctor, on direct examination you testified you never conspired with anybody to prevent doctors from associating themselves with the hospital associations? A. That is right.

Q. You were a member of the Board of Censors which kicked Dr. Steagall and Dr. Johnston out of the Society for associating with hospital associations? A. That is the same question you asked Dr. Baum.

Q. That is right. A. And it is subject to the same corrections because the Council of the State Society and
1837 the State Society do not kick anybody out.

Q. They certainly have the privilege of preventing any county medical society kicking somebody out of the county society? A. No, the procedure is very clearly outlined. Only the county society has that power of expelling a member, and the member, if expelled, if he felt or feels he has not been handled according to the rules, he has a right to appeal to the State Society Council which acts as a sort of court of appeals, and if he is not satisfied with the decision of the State Council he can then appeal to the Judicial Council of the American Medical Association.

Q. I don't quite understand what you think the power of, what is called, the intermediate court is. Don't you think an appellate court has the power to make a determination which, in turn, is binding upon the lower court? A. If the County Society has failed to follow the proper procedure, first, in calling the man in to attempt to conciliate the grievance, and then following that the Board of Censors of the County Society prefers charges and the matter then goes to the Council of the County Society and they act upon it. Then, if he is expelled, then he appeals to the State Society and the action of the State Society is to either sustain or turn down or reject the action of the County Society.

Q. You are not confusing the jurisdiction of the
1838 Judicial Council of the AMA with the Jurisdiction of the State Society? A. I think from what you said this morning about the situation, or this afternoon, it was that the Council shall act as a Board of Censors, of the State Society; no doubt the State Society Council probably has the right to go into it further, to go into further angles of the case if they see fit.

Q. That is what I was getting at. I assume you have not seen this pamphlet recently, have you? A. No.

Q. The Council or Board of Censors of the State Society is limited in its review to determining whether or not the proper procedure is followed. A. I don't recall now. That is a long time ago. I recall that the action of the County Society was sustained. That is the only recollection I have.